TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [illegible]

No. [illegible] 190

THE DALTON ADDING MACHINE COMPANY, APPELLANT,

vs.

THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH OF VIRGINIA, ROBERT A. [illegible], WILLIAM P. SHEA, AND J. RICHARD [illegible], MEMBERS OF SAID COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED [illegible] 6, 1913.

(28,749)

(23,740)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 591.

THE DALTON ADDING MACHINE COMPANY, APPELLANT,

vs.

THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH OF VIRGINIA, ROBERT R. PRENTIS, WILLIAM F. RHEA, AND J. RICHARD WINGFIELD, MEMBERS OF SAID COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a District Court of the United States for the Eastern District of Virginia, begun and held at the Court Room in the Post Office Building in the City of Richmond, Virginia, on the first Monday in the month of April, being the seventh day of the same month, in the year of our Lord one thousand nine hundred and thirteen.

Present: The Honorables J. C. Pritchard, United States Circuit Judge, Edmund Waddill, Jr., United States District Judge, and John C. Rose, United States District Judge, in accordance with the provisions of Section 266 of an Act entitled: "An Act to Codify, Revise and Amend the Laws relating to the Judiciary."

Among other- were the following proceedings, to-wit:—

In Equity. No. 88.

THE DALTON ADDING MACHINE COMPANY, Complainant,
versus
THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH of Virginia, Robert R. Prentis, William H. Rhea, and J. Richard Wingfield, Members of said Commission, Defendants.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF VIRGINIA.

THE DALTON ADDING MACHINE COMPANY,
Complainant,

vs.

THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH OF VIRGINIA, ROBERT R. PRENTIS, WILLIAM F. RHEA AND J. RICHARD WINGFIELD, MEMBERS OF SAID COMMISSION,
Defendants.

In Equity. No. 88.

To the Honorable the Judges of the District Court of the United States in and for the Eastern District of Virginia:

The Dalton Adding Machine Company, a corporation, duly organized and existing under and by virtue of the laws of the State of Missouri, having its office and principal place of business at Poplar Bluff, Missouri, and a citizen and resident of the State of Missouri, brings this its bill of complaint against The State Corporation Commission of the Commonwealth of Virginia, whose office or place of holding its meetings or sessions for the transacton of business is at Richmond, Virginia, in the Eastern District of Virginia, and Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, residents of Richmond, Virginia, in the Eastern District of Virginia, citizens of the State of Virginia, and members of and composing the State Corporation Commission of the Commonwealth of Vrginia; and thereupon your orator complains and says:

1. That your orator is a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, with its office and factory and place of business at Poplar Bluff, Missouri; that it is and for some years last past has been engaged in the business of manufacturing and selling a useful and valuable adding, listing and calculating machine; that it and its predecessors began the manufacture of such machines in a small way in the year 1902, and continued to manufacture and sell such machines to the present time; that in the preparation for manufacturing and placing upon the market its adding, listing and calculating machines it has, since entering upon the business more than ten years ago, invested, in experimental work, the building of a factory, the construction, purchase and installation of special tools and machinery, more than one million dollars ($1,000,000.00); that it has grown and increased until it has on its factory pay rolls in the neighborhood of four hundred (400) employees; that it pays out to its employees, clerks, and salaries to its executive officers, between four and five thousand dollars each week; that it has by its efforts, labors and expenditures of money built up a large and growing demand for its adding, listing and calculating machines, until the purchasers and users of such machines are to be found in every state and territory of this country, and in Austria, Belgium, Bulgaria, Canada, Denmark, France, Finland, Germany, Greece, Holland, Hawaiian Islands, Italy, Mexico, Sweden, Russia, and perhaps other countries; that among its users are practically all of the great firms, companies and corporations in the country, many of the principal cities of the country, including the City of Richmond, Virginia, more than fifteen hundred (1500) banks, and every department of the United States Government, which facts your orator states to show the value, utility and popularity of its adding, listing and calculating machines.

2. That your orator is and from the beginning of its business has been engaged in interstate commerce, and, as your orator believes and charges the fact to be, has engaged in no other way or manner of carrying on and conducting its business in any state outside of the State of Missouri; that in so carrying on and conducting its business it has appointed salesmen or solicitors, as your orator will term them herein, in the various States of the United States, who are merely "drummers," in common and popular language, and whose duty and occupation is to "drum" up business and solicit orders for or proposals to purchase its adding, listing and calculating machines, and to that end your orator has appointed a salesman or solicitor in the State of Virginia, to secure proposals or orders for its machines as the result of his personal solicitation or the personal solicitation of those employed by him to assist him in securing orders; that the salesman or solicitor so appointed by your orator is located at Richmond, Virginia; that he is not a clerk or employee of your orator, is paid no salary or fixed compensation by your orator, is not on its pay rolls, and is furnished no office or place of business by your orator; that its salesman or solicitor rents his own office and bears his own expenses, and pays the salary or commission and the expenses of the solicitors employed by him to assist him in soliciting orders or proposals for your orator's machines; that the compensation received by him is merely a commission on sales effected and collections made, and varies as they vary; that neither he nor those employed by him has any power to actually sell a machine or convey title thereto, and has not sold a machine or conveyed title thereto in any case or instance, but that his power and the power of those whom he employs is expressly limited to merely soliciting orders or proposals to purchase machines, which orders are taken on printed blanks or forms furnished him by your orator, which forms contain, and have always contained, the words, "This

order subject to approval of the Company," which orders amount only to an offer or proposition to purchase a machine, on the part of the person, firm, company, or corporation desiring to buy; that after such offers or proposals are signed by the party desiring to purchase a machine, they are sent by the solicitor or salesman to the Home Office of your orator at Poplar Bluff, Missouri, for approval and acceptance; that your orator thereupon considers the offers or proposals to purchase, and has accepted some and has rejected some sent to your orator by its salesman or solicitor from Virginia and other states, as your orator has found the terms of payment, the responsibility of the purchaser, and similar matters satisfactory or otherwise; that all checks and moneys are likewise forwarded to the Home Office of your orator at Poplar Bluff, Missouri, and the commission due to the salesman or solicitor in Virginia, as well as in other states, are paid by your orator from time to time from its Home Office in Missouri, as collections are received; that in no case is any title vested in the prospective purchaser in or to the machine which he is proposing to buy, but the same remains the property of your orator until your orator has accepted the offer or proposal and received the money in full therefor.

2½. That your orator, in conducting its business of soliciting and securing sales in Virginia through its salesman or solicitor, as above explained, has employed three forms of contracts; one where the party buys the machine and pays for the same outright, one where the party buys the machine and pays for the same in partial payments, and one where the party rents the machine with a right to purchase the same within a given time; and that said contracts are all in writing, and respectively read as follows—the names of the purchaser and salesman, as here presented, being the usual conventional names employed for illustration, and the blanks for the place,

amount, date, and similar matters, being filled in to express the facts as they may be in each case—namely:

"ORIGINAL.

$300. This order subject to approval of the Company.

DALTON ADDING, LISTING AND CALCULATING MACHINES.

City, Richmond; County, Henrico; State, Virginia.

DALTON ADDING MACHINE COMPANY,

Poplar Bluff, Missouri. Date October 1, 1912.

I hereby agree to purchase one Dalton Adding, Listing and Calculating Machine, Model Nine Ten Regular, (or as the fact may be), Serial No. 12114, and Satelite Stand. Price of same to be $300.

Above machine to be guaranteed for a period of two years from date of purchase against defects of material and workmanship. It is expressly understood that this written contract covers all agreements between the parties herein.

(Signed) JOHN DOE.

Salesman, Richard Roe.

All checks to be drawn to the order of
Dalton Adding Machine Company."

"ORIGINAL.

$300. This order subject to approval of the Company.

DALTON ADDING, LISTING AND CALCULATING MACHINES.

City, Richmond; County, Henrico; State, Virginia.

Date October 1, 1912.

In consideration of the purchase of one DALTON ADDING AND LISTING MACHINE, Style Nine Ten Regular, (or as the case may be), Machine 12114, and Satelite Stand, I promise to pay to the order of the DALTON ADDING MACHINE Co., Poplar Bluff, Mo., Three Hundred Dollars ($300) as follows: twenty-five dollars ($25) per month for 12 months beginning with the month of the date hereof.

I hereby agree that the title to the above machine shall remain in the DALTON ADDING MACHINE COMPANY until payment therefor is made in full. In case of loss or damage by fire, I will remit the unpaid balance under this contract when due. THE DALTON ADDING MACHINE COM-

PANY shall have the power to retake said machine at any time after default in payment, or failure on my part to keep any of the promises or agreements made herein, and such amount as has been paid shall apply as rent on said machine for the time it shall have been in my possession. In the event of my failure to make any payments as above, I will deliver the DALTON ADDING AND LISTING MACHINE above described, to the DALTON ADDING MACHINE COMPANY immediately upon request.

Above machine to be guaranteed for a period of two years from date of purchase against defects of material and workmanship.

It is expressly understood that this written contract covers all agreements between the parties herein. You are authorized to make drafts for payments as they become due, together with interest, sending same to the First National Bank of Richmond for collection.

(Signed) JOHN DOE.

Salesman, Richard Roe.

All checks to be drawn to the order of
Dalton Adding Machine Company."

"RENTAL CONTRACT,

(To be executed in duplicate, one copy retained by the lessee and one copy sent to the Dalton Adding Machine Co., Poplar Bluff, Mo.)

Not effective unless approved by the Company.

DALTON ADDING, LISTING AND
CALCULATING MACHINES.

City, Richmond; County, Henrico; State, Virginia. Date, October 1, 1912. Street No. 32 North Seventh Street. To DALTON ADDING MACHINE COMPANY, Poplar Bluff, Missouri.

The receipt of the Dalton Adding, Listing and Calculating Machine number 12114 and Satelite stand is hereby acknowledged, for the use of which I agree to pay a rental of Ten Dollars ($10) per month for a period of six months, said rental to be payable at the office of the DALTON ADDING MACHINE COMPANY in Poplar Bluff, Missouri, on the first day of each and every month from the date hereof until paid.

The said Dalton Adding Machine is to be used in the above premises in Richmond, State of Virginia, and I further agree not to remove said machine from said premises

without the written consent of the DALTON ADDING MACHINE COMPANY.

I further agree to become responsible for the safe keeping of the said machine and for any loss or damage done thereto, reasonable wear excepted, and to surrender the same to the DALTON ADDING MACHINE COMPANY on demand; (a) upon expiration of the above rental period; (b) upon default in payment of rentals when due, or the violation by the lessee of the terms of this agreement; or (c) in the event this shall not be approved by the said DALTON ADDING MACHINE COMPANY, as hereinafter provided.

I understand that the purchase price of a machine like the above is Three hundred Dollars ($300), and if purchase is made within the above mentioned rental period, the amount paid as rental shall apply on the purchase price of the machine, but not otherwise.

It is further agreed that this instrument shall not become effective unless approved and accepted by the said DALTON ADDING MACHINE COMPANY at Poplar Bluff, Missouri. Notice of such approval and acceptance is hereby waived. This writing contains all of the agreements between the parties. I have retained a duplicate hereof.

(Signed) JOHN DOE.

Witness:

RICHARD ROE, Salesman.

All checks to be drawn to the order of
Dalton Adding Machine Co."

That all orders or proposals signed by parties desiring to purchase or rent machines in Virginia, and sent to your orator for approval and acceptance, as above explained, are and have been on the forms or blanks above quoted; that such orders or proposals are all transmitted to your orator through the Post Office by mail, and when signed by your orator at Poplar Bluff, Missouri, and not before, became effective and completed contracts, and contained the entire contract or agreement covering the transaction between your orator and the purchaser; that all the machines which have been sent to the State of Virginia for the purpose of being sold, or after

an order for the same has been procured, as above or as hereinafter explained, have been sent by expressing or transmitting the same through an express company constituting a common carrier; and that when a party who has tried or tested a machine already shipped by express into the State of Virginia to be sold, as above and as hereinafter explained, desires to purchase the particular machine which he has tried and has in his possession for the purpose of trial, the said machine is designated, in the order or proposal which he signs, by specific description, referring to it by its distinguishing style and serial number, so that his order or proposal, sent through the mails to your orator at Poplar Bluff, Missouri, for consideration and acceptance, as above explained, and the contract, when accepted and signed at Poplar Bluff, Missouri, so as to become a completed and effective contract, segregates such particular machines from all others, and specifies and relates to it alone, and to no other machine whatever.

3. That your orator's factory is located at Poplar Bluff, Missouri, and all the machines sold to purchasers in Virginia or elsewhere are manufactured there, and none in the State of Virginia; that owing to the nature of the machine it is necessary for the salesman or solicitor, in effecting sales and in securing offers or proposals for the purchase of a machine, to be able to show the same to prospective purchasers, and in some cases allow them to try the same by installing them in their offices or place of business for a few days or a limited period, to determine their capacities, adaptation to the business carried on by the prospective purchasers, superiority over machines of other makes, and matters of that kind; that to enable its salesman or solicitor to secure orders or proposals for its machines and to effect a sale of the same in the way above explained, it is necessary for your orator to ship machines into the State of Virginia to allow them to be exhibited and in some cases tried or tested by prospective pur-

chasers; that all of the machines that have been shipped by your orator into the State of Virginia, and so exhibited and tried or tested there, were shipped to Virginia for the purpose of effecting a sale of the same, and for no other purpose; that after a prospective purchaser has signed an order or proposal to buy a machine and the same has been sent by the salesman or solicitor to the Home Office of your orator at Poplar Bluff, Missouri, and been accepted by your orator, a machine to fill such order is supplied to the purchaser in one of two ways: First, by shipping a machine direct from the factory in Missouri to fill the order, or, secondly, by allowing the purchaser to retain the machine which he had tested or tried and with which he had become familiar, in which case another machine is shipped from the factory to the salesman or solicitor to take the place of the machine which he had placed on trial and which the purchaser, from having become familiar with the same, preferred and desired to keep; that whether the purchaser is supplied with a machine in the one way or the other, there has been in every case an actual shipment of a machine from Missouri into Virginia, either to supply the purchaser whose order or proposal had been already accepted by your orator, or to be sold by exhibiting the same and allowing a party becoming interested in the same to try or test it before signing an order or proposal, if he so desired, to determine its adaptability and value to him in his particular business; that in the majority of cases the machine is shipped from Missouri to Virginia to fill orders or proposals already secured before the shipment is made, although in a number of cases, perhaps in three cases out of ten, the purchaser is allowed to retain the machine already shipped into Virginia for the purpose of sale, and which he has tried and tested before signing an order or proposal for the purchase of the same, but that in each and every case there is a shipment of a machine from Missouri into Virginia, the only difference being that in some cases the shipment is made for the purpose of a sale and in

anticipation of a sale, while in the remaining cases the shipment is made after the order or proposal to purchase has been secured by the salesman or solicitor and transmitted to the Home Office of your orator in Missouri and accepted by it.

4. That your orator alleges and states the fact to be that the purpose, end, and object of the shipment of a machine from Missouri into Virginia, before an order or proposal has been received for the same, is for the purpose of effecting a sale thereof, and that the shipment, the solicitation by the salesman, the testing or trying of the machine before the signing of an order or proposal to buy the same, are all merely incidents or steps leading up to the final consummation of the sale, which, when completed, constitutes, as your orator contends, a transaction of Interstate Commerce, of which the initiation of the transaction by shipment and the successive steps by solicitation, testing or trying, and signing a proposal or offer to buy, are all necessary, legitimate, and component ingredients or parts of the completed transaction, which includes all the initiatory and intervening acts, instrumentalities and dealings that bring about the consummated sales; that the transaction is, in reality and in fact, a transaction between your orator and the purchaser negotiating and dealing from different states—Missouri and Virginia in this case—in which the salesman or solicitor merely forms a link, convenience, or instrumentality; and that the transaction as a commercial entity includes your orator on the one hand in Missouri, and the purchaser on the other hand in Virginia, each dealing from its or his respective place of business, the one in Missouri and the other in Virginia, the same in principle and in reality as if the transaction were conducted by correspondence and without any personal intermediary link or instrumentality represented by the salesman or solicitor, so that the completed transaction constitutes an interstate contract, trans-

action or dealing, irrespective of whether the machine is shipped from Missouri to Virginia before or after the contract is signed or executed.

5. That the adding, listing and calculating machines manufactured by your orator at Poplar Bluff, Missouri, are entirely finished and completed in every respect at its factory, and are then enclosed in a box or case to preserve their delicate mechanisms from breakage or injury while being transported or shipped; that they are received in the State of Virginia by the salesman or solicitor in the original box or package in which they are shipped, and are delivered to the purchaser when shipped to fill an order or proposal that has been already received and accepted by your orator, in the originial box or case in which they were shipped, and in those cases where they have been shipped before an order or proposal has been received and accepted by your orator, they are in some cases sold and delivered to the purchaser, when one is secured, in the original box or case in which they were shipped, and in other cases where the prospective purchaser desired to test or try the same, they are removed from the original box or case for the purpose of such test or trial, but for no other purpose; that no change, addition, subtraction or modification of any kind is made in the machine after it is shipped to Virginia, but where the party testing or trying the same desires to make a purchase, and signs an order or proposal which has been forwarded to the office of your orator in Missouri and accepted, the machine is delivered to the purchaser in exactly the same state and condition, in every respect, that it was in when shipped from the factory in Missouri; and that, in reality and in fact, the sale, when effected and consummated, by the signing of an order or proposal by the prospective purchaser in Virginia, and the approval and acceptance of the order or proposal by your orator in Missouri, is the same to all intents and purposes as a sale of the machine in the origi-

nal box or case, inasmuch as no addition or change whatsoever to or in it has been made, and the object of removing it from the box or case was merely for the purpose of exhibiting it and enabling it to be tried or tested by the party interested, to see whether it was adapted to the purposes and requirements of his business.

6. That by the Act of the Legislature of the State of Virginia, in force June 15th, 1910, and printed in the Virginia Code, annotated Supplement, 1910, it is provided as follows:

"Sec. 1104. Every company to keep an office in this State for payment of claims to residents; foreign company to appoint agent on whom process may be served; copy of charter, with power of attorney, to be filed, &c.; license; fees.

"Every incorporated company doing business in this State shall have an office in the State, at which all claims against the company due residents of the State may be audited, settled and paid. Every such company incorporated under a jurisdiction beyond the limits of this State (and hereinafter designated as a foreign corporation) shall, before doing business in this State, present to the State Corporation Commission (a) a written power of attorney, executed in duplicate, appointing some person residing in this State its agent, upon whom all legal process against the corporation may be served, and who shall be authorized to enter an appearance in its behalf; (b) two duly authenticated copies of the charter of the corporation; and (c) a certificate of the auditor of public accounts, showing the payment into the treasury of the fee required by law to be paid by such corporation; and shall obtain from said Corporation Commission a certificate of authority to transact business in the State. If it shall be made to appear to the State Corporation Commission that said corporation has complied with the law relative to the obtaining of a certificate of authority for foreign corporations of the character of the applicant corporation, then said Corporation Commission shall issue to said corporation a certificate of authority to transact business in the State. Said commission shall file and preserve in their office one copy each of the power of attorney,

charter, certificate of the auditor, and a certificate of the commission granting such certificate of authority, and forward copies of said documents to the secretary of the Commonwealth, who shall file and preserve the same in his office. Whenever, by reason of his removal from the State or from any other cause, the powers of such resident agent shall be terminated, then such foreign corporation shall by like written power of attorney, executed in duplicate and filed with the Corporation Commission as above provided, appoint another resident agent; one copy of such power of attorney shall be filed and preserved in the office of the Corporation Commission and the other copy thereof transmitted to the secretary of the Commonwealth to be filed in his office. If the charter of any foreign corporation thus authorized to transact business in this State is amended, two duly authenticated copies of such amendment shall be presented to the Corporation Commission and filed as copies of the original charter are required to be filed, and the fee required by law on such amendment shall be paid in the manner prescribed by law. Any foreign corporation which has heretofore paid the fee required by law to entitle it to transact business in this State, and has otherwise complied with the laws heretofore existing relative thereto, shall not, on application for certificate of authority to transact business in this State, be required to pay such fee again, nor to file a copy of the charter with the secretary of the Commonwealth, if a copy thereof is already on file in his office. Such corporation shall pay the clerical fees for such certificate of authority and for filing such papers as prescribed by law."

That the Statute of Virginia provides penalties for the enforcement of the above provision to compel foreign corporations to enter the State and take a license or authority to do business within the State by a provision reading as follows:

"Sec. 1105. License, penalty for doing business without, agents personally liable.

"If any foreign corporation shall transact business in this State without first obtaining such certificate of authority provided for in the preceding section, it shall be fined not less than ten dollars nor more than one thousand

dollars, such fine to be imposed by the State Corporation Commission, whose duty it shall be to see that the provisions of the preceding section are complied with. Every transaction had in the State by such a corporation without such certificate of authority shall be deemed a separate offense. The officers, agents and employes of any such corporation doing business in this State without such certificate of authority shall be personally liable to the State for any fines imposed on it, and to any resident of the State having a claim against such corporation, and service of legal process upon any of said officers, agents, or employes shall be deemed sufficient service on the corporation."

7. That your orator further alleges and charges the fact to be that the said State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, composing the said State Corporation Commission, which your orator now and hereafter herein will refer to as the defendants, are threatening to begin a suit or take proceedings against your orator or its salesman or solicitor, to enforce the provisions of the statute quoted above, and to enforce the penalties therein provided, notwithstanding the business of your orator, as it alleges and contends is solely an Interstate Commerce business and carried on as above explained; that the business of your orator, being an Interstate Commerce business in every respect, is authorized, justified, and protected by the Commerce Clause of the Constitution of the United States, and especially by the third clause of Section 8 of Article 1 of the Constitution of the United States, which provides that Congress shall have power "To regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes"; that to enforce the above provisions of the Virginia Statute against your orator will be and is in violation of the above provision of the Constitution of the United States; and that the above

provision of the Statute of the State of Virginia, when construed or employed, or attempted to be construed or employed, so as to prevent, interrupt, trouble, molest, or in any way interfere with your orator, in carrying on its business as aforesaid, is void and of no force or effect whatsoever, as being contrary to the above provision of the Constitution of the United States.

8. That your orator further alleges and represents to your Honors that it has the right under the Constitution of the United States to carry on Interstate Commerce business, or transactions within the State of Virginia, and to use or employ any convenient instrumentalities and methods in doing so, without being prevented, interrupted, troubled, molested, or interfered with by the defendants or any one else; that the defendants have no right to prevent, interrupt, trouble, molest, or interfere with the business of your orator under color of the Statute of the State of Virginia, above quoted, or otherwise, but that the said defendants are threatening so to do, and as your orator has reason to believe and fear, and does believe and fear, they will do so, unless restrained by an injunction from this Honorable Court.

9. That your orator further shows and represents to your Honors that it has various competitors in its business of selling adding, listing and calculating machines in the State of Virginia, with whom it is constantly in sharp and vigorous competition in the State of Virginia; that if the said defendants are permitted to prevent, interrupt, trouble, molest, or in any way interfere with the interstate commerce business carried on in the State of Virginia, as they are threatening to do by attempting to enforce against it or its salesman or solicitor, the provisions of the Virginia Statute above quoted, even though said prevention, interruption, trouble, molesta-

tion, or interference be of a temporary character, it will cause your orator to lose sales of its adding, listing and calculating machines, to its competitors, and injure its standing and prestige in the State of Virginia; and other states (which after ascertaining its method of carrying on business in such states, being identical in every respect with its method of carrying on business in the State of Virginia, have acquiesced in the rightfulness and legality of your orator's methods of conducting and carrying on its business, precisely as it is doing in the State of Virginia), will be encouraged and caused to commence proceedings against it under their various statutes relating to foreign corporations, which they have heretofore foreborne to do upon your orator's explanation to them of its business methods, and in various ways operate to work irreparable financial loss, injury and damage to your orator, which can never be computed, ascertained, or recovered, but which will be and will always continue to be irreparable and remediless.

10. Your orator further shows and represents to your Honors that, as it understands, the defendants insist that every sale of a machine which has been first shipped into the State of Virginia, although shipped for the purpose of sale, and sold only in the way above explained, is a separate and distinct offense, under the provisions of the statute above quoted; that in enforcing the provisions of the statute against your orator, or against its salesman or solicitor, or those employed by him to assist him in his work of solicitation, as threatened by the defendants, your orator has reason to fear, and does fear, that there will be many separate and distinct fines or penalties imposed, and a multiplicity of proceedings had and taken against your orator or its salesman or solicitor, which will entail a large and unknown amount of expense, annoyance, trouble, and financial damage and injury to your orator varying with the number and frequency with which the defend-

ants attempt to enforce the provisions of the said statute, by the imposition of penlaties and other proceedings; that your orator has no plain, full, complete, or adequate protection or remedy at law, and can only be properly and adequately protected in the enjoyment of its rights under the Constitution of the United States in a Court of Equity, where matters of this kind are cognizable and relievable; and that the right to your orator, now in controversy, to do business in the State of Virginia, as it has been doing and as explained, and the fines or penalties provided by the provisions of the Statute of Virginia quoted above, and threatened by the defendants, are of the value of three thousand dollars ($3,000.00), exclusive of interest and costs, and in fact, greatly in excess of such value.

To the end therefore that your orator may obtain relief herein according to the course and practice of this court, sitting as a court of equity, and because it has no adequate remedy elsewhere, it prays that there may be granted unto it the relief numerated below, and such other and further relief as may be according to equity and good conscience.

(*a*) That the defendants, the State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, may be made defendants to this bill of complaint and be required to answer it and every allegation therein contained, as fully as if directly interrogated as to each, but not under oath, an answer under oath being hereby expressly waived.

(*b*) That the defendants, the State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, and each of them, and their officers, agents, attorneys, servants, and employees, may be perpetually enjoined from imposing or attempting to impose the fines or penalties provided in the Statute of Virginia, quoted above, and from directly or indirectly prevent-

ing, interrupting, troubling, molesting, or interfering with the business of your orator carried on as above explained, under color or by authority of the above quoted provisions of the Statute of Virginia or otherwise; and that a provisional or preliminary injunction may be issued against the defendants enjoining and restraining them to the same purport, tenor and effect as herein prayed in regard to said perpetual injunction.

11. And, finally, to the end that equity may be done and that the relief herein prayed, and all other reliefs that it may be righteous in the premises to administer, may be awarded to your orator, may it please your Honors such relief fully to grant, and to award against said defendants, The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, a writ of subpœna *ad respondendum* of the United States, issuing out of and under the seal of this Honorable Court, commanding them, and each of them, upon a certain day therein to be named and under a certain penalty, to be and appear in this Honorable Court, then and there to answer to all and singular the premises, and to stand to and abide by such further order, direction and decree as may be made against them, and each of them.

And your orator, as in duty bound, will ever pray.

THE DALTON ADDING MACHINE COMPANY.
By BIRNEY DYSART,
Secretary.

BANNING & BANNING,
Solicitors for Complainant.
THOMAS A. BANNING,
Of Counsel.

State of Missouri, County of Butler, ss.

Birney Dysart, being first duly sworn, deposes and says: That he is the secretary of the Dalton Adding Machine Company, the complainant in the foregoing bill of complaint, and knows the contents thereof; and that the statements therein contained are true, except as to such matters and things as are therein stated to be set forth upon information and belief, and as to such matters and things he believes it to be true.

BIRNEY DYSART.

Subscribed and sworn to before me this 8th day of October, 1912.

B. C. HARRISON,
Notary Public.

My commission expires April 16, 1916.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

The Dalton Adding Machine Company,
Complainant,
vs.
The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William H. Rhea, and J. Richard Wingfield, Members of said Commission,
Defendants.
} In Equity.

Special and limited appearance at rule for defendants on the first Monday in November, 1912.

We, the undersigned attorneys at law, hereby appear for and on behalf of the defendants in the above-named cause, for the purpose of objecting to the jurisdiction of this court to entertain the said cause, or to make any order therein, against the said defendants, or any of them, and for that purpose alone; this appearance is limited, and is made specially and solely for the purpose of objecting to the jurisdiction of the court in the said cause, and for no other purpose whatsoever.

SAMUEL W. WILLIAMS,
Atty. Genl. of Va.,
Solicitors and Counsel for the said Defendants.

A true Copy—Attest:
JOSEPH P. BRADY,
[SEAL.] Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

The Dalton Adding Machine Company,
Complainant,
vs.
The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William H. Rhea, and J. Richard Wingfield, Members of said Commission,
Defendants.
} In Equity.

The demurrer of Robert R. Prentis, William F. Rhea (erroneously called William H. Rhea), and J. Richard Wingfield, defendants in the above-styled suit, to the bill of complaint of the above-named complainant.

These defendants, by protestation, not confessing or acknowledging any of the matters and things in the complainant's bill to be true in such manner and form as the same are therein set forth and alleged, demur thereto, and for cause of demurrer show:

FIRST: That the said complainant has not, in and by the said bill, made or stated any such cause as doth or ought to entitle it to any such relief as is thereby sought and prayed for;

SECOND: That these defendants have no personal or individual interests in the matters and things referred to in said bill;

THIRD: That the said complainant has an adequate remedy at law;

FOURTH: That this court has no jurisdiction to hear and determine this cause for the reason that this is a suit against the State of Virginia;

FIFTH: That this court has no jurisdiction to hear and determine this cause, for the reason that the State Corporation Commission, when hearing an alleged violation of the penal statutes of Virginia referring to foreign corporations, with the view of determining whether a fine should be imposed upon such corporation for a violation of such statutes, is a "Court" of the State of Virginia, and this court is therefore without power to enjoin the said Commission when engaged in the discharge of its judicial functions.

Wherefore and for divers other good causes for demurrer appearing in said bill, these defendants demur thereto, and humbly demands the judgment of this court whether they shall be compelled to make any further answer to the said bill; and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

SAMUEL W. WILLIAMS,
Atty. Genl. of Va.,
Solicitors and Counsel for the said Defendants.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

SAMUEL W. WILLIAMS,
Atty. Genl. of Va.,
Solicitors and Counsel for the said Defendants.

State of Virginia, City of Richmond, to-wit:

....., ..., ..., being first duly sworn, deposes and say that they are the defendants named in the foregoing

demurrer; that said demurrer is not interposed for delay, and that the same is true in point of fact.

ROBERT R. PRENTIS,
WM. F. RHEA,
J. R. WINGFIELD.

SUBSCRIBED and sworn to before me this 23rd day of October, 1912.

W. W. DUNFORD,
Notary Public.
Notary Public for the City of Richmond, State of Virginia.

A true Copy—Attest:
JOSEPH P. BRADY,
[SEAL.] Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

The Dalton Adding Machine Company, *Complainant,*
vs.
The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William H. Rhea, and J. Richard Wingfield, Members of said Commission, *Defendants.* } In Equity.

The joint and separate plea of Robert R. Prentis, William F. Rhea (erroneously called William H. Rhea), and J. Richard Wingfield, defendants in the above-styled suit, to the bill of complaint of the above-named complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the

same are herein set forth and alleged, for plea to the whole of said bill say, that they have no personal, private or individual connection with the subject-matter of this suit, but are only interested therein or connected therewith as members of the State Corporation Commission of Virginia;

That the said State Corporation Commission was created and established and its functions, powers, duties and procedure prescribed and provided for by the Constitution and statutes of this State (of which this court will take judicial notice) as will fully appear from the exhibits herewith filed which are hereby refered to and made a part of this plea as fully as if the same were herein set forth in full, and are prayed to be taken and read as a part of this plea;

That the said Constitutional and statutory provisions are still in full force and effect and were in full force and effect on the day this suit was instituted, and have been in full force and effect for a long time anterior to the date on which this suit was instituted and they represent the entire Constitutional and statutory provisions of said State upon the subject of this plea or relating to the subject-matter of this suit.

These defendants therefor say that under and by virtue of these laws it appears that this Honorable Court is without power to grant any of the relief prayed for in the said bill of complaint or to entertain this suit, because no relief can be granted the complainant herein without enjoining the State of Virginia through a department of its government the State Corporation Commission, which this court is forbidden to do by the eleventh amendment of the Constitution of the United States;

All matters and things these defendants aver to be true and they file the same to the whole of the said complainant's bill

as aforesaid and pray the judgment of this Honorable Court whether they ought to be required to make any further answer to the said bill, and pray to be hence dismissed with their costs and charges in their behalf most wrongfully sustained.

SAMUEL W. WILLIAMS,
Atty. Genl. of Va.,
Solicitors and Counsel for the said Defendants.

We hereby certify that in our opinion the foregoing plea is well founded in point of law.

SAMUEL W. WILLIAMS,
Atty. Genl. of Va.,
Solicitors and Counsel for the said Defendants.

State of Virginia, City of Richmond, to-wit:

ROBERT R. PRENTIS, being first duly sworn, deposes and says that he is one of the defendants named in the foregoing plea and that the said plea is true in point of fact, and is not interposed for delay.

ROBERT R. PRENTIS.

Subscribed and sworn to before me this 23rd day of October, 1912.

W. W. DUNFORD,
Notary Public.
Notary Public for the City of Richmond, State of Virginia.

A true Copy—Attest:
JOSEPH P. BRADY,
[SEAL.] Clerk.

Order for Hearing on Demurrer and Plea.

DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF VIRGINIA.

The Dalton Adding Machine Company, *Complainant,* *vs.* The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of Said Commission, *Defendants.*	In Equity. No. 88.

Upon the motion or application of the complainant by its solicitor, Thomas A. Banning, to have the demurrer and plea heretofore filed herein set down for argument on a day certain, and upon the suggestion of defendants by their solicitor, Samuel W. Williams, Attorney-General of Virginia, that the same should be heard before three judges, and waiving the service of any formal notice, but without waiving any of the rights which the defendants have or may have to object to the jurisdiction of the court under the special appearance heretofore filed, and without waiving any right whatever of the defendants, but specifically reserving the same, I do hereby, in conformity with the provisions of Section 266 of an Act entitled "An Act to Codify, Revise and Amend the Laws Relating to the Judiciary," but without passing upon the question as to whether said Section 266 requires three judges to sit on the hearing of the demurrer and plea, or any motion properly made and which is legal & pertinent, call to my assistance and to aid me in the hearing and determination of said demurrer and plea or motion, the two circuit judges of the Fourth Judicial Circuit, Honorable Nathan Goff and J. C. Pritchard; and I do also designate Tuesday,

the seventeenth day of December, 1912, as the time for the hearing of the same, at Richmond, Virginia.

EDMUND WADDILL, JR.,
United States District Judge.

Order for Hearing Application for Injunction.

DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF VIRGINIA.

The Dalton Adding Machine Company, *Complainant,* *vs.* The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of Said Commission, *Defendants.*	In Equity. No. 88.

Now comes the complainant by its solicitor, Thomas A. Banning, and moves to have the order entered herein on the 26th day of November, 1912, setting the demurrer and plea heretofore filed by the defendants down for argument, vacated and set aside; and upon consideration thereof, it is so ordered by the court.

Thereupon, upon motion or application of the complainant by its solicitor, Thomas A. Banning, for the granting of a preliminary or interlocutory injunction herein, as prayed for in the bill of complaint, and in accordance with the provisions of Section 266 of an Act entitled "An Act to Codify, Revise and Amend the Laws Relating to the Judiciary," that such applications must be heard before three judges, and upon the waiving by the defendants of the formal five days' notice specified in Section 266 above, by their solicitor, Samuel W. Williams, Attorney-General of Virginia, and upon the personal acceptance of the said notice by the Governor of Va. and the Attorney-Gen'l of Va. herewith filed, but upon the distinct statement and understanding that he does not

thereby waive any of the rights which the defendants have or may have to object to the jurisdiction of the court under the special appearance heretofore filed, or otherwise, and without waiving any rights whatever of the defendants, but specifically reserving the same, I, Edmund Waddill, Judge of the District Court of the United States for the Eastern District of Virginia, do hereby, in conformity with the provisions of Section 266 of the Act above referred to, call to my assistance to aid me in the hearing and determination of said application for said preliminary or interlocutory injunction Honorable J. C. Pritchard, one of the Circuit Judges for the Fourth Judicial Circuit, & the Hon. John C. Rose, United States District Judge for the District of Md.; and I also designate Wednesday, the 18th day of December, 1912, as the time for the hearing of the same at Richmond, Virginia.

EDMUND WADDILL, JR.,
U. S. District Judge.

Dec. 17, 1912.

Answer of Defendants to Injunction Motion.

DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF VIRGINIA.

The Dalton Adding Machine Company, *Complainant,* *vs.* The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of Said Commission, *Defendants.*	In Equity. No. 88.

The said defendants now come and enter a qualified appearance in this case for the purpose of objecting to the jurisdiction of the court, and for this purpose only, and insist that the court ought not to take jurisdiction of this case, and ought not to grant the preliminary or interlocu-

tory injunction prayed for in the bill, for the reason that the court is without jurisdiction or authority so to do; but should the court hold that it has jurisdiction, then the defendants insist that no injunction should be granted, for the following reason:

1st. For want of equity on the face of the bill which would warrant this court in granting such injunction; and it is respectfully submitted on both phases of the case as above set forth that this court is without jurisdiction to hear and determine any question raised by the bill upon the following grounds:

First. That the said complainant has not, in and by the said bill, made or stated any such cause as doth or ought to entitle it to any such relief as is thereby sought and prayed for;

Second. That these defendants have no personal or individual interests in the matters and things referred to in said bill;

Third. That the said complainant has an adequate remedy at law;

Fourth. That this court has no jurisdiction to hear and determine this cause for the reason that this is a suit against the State of Virginia;

Fifth. That this court has no jurisdiction to hear and determine this cause, for the reason that the State Corporation Commission, when hearing an alleged violation of the penal statutes of Virginia referring to foreign corporations, with the view of determining whether a fine should be imposed upon such corporation for a violation of such statutes, is a "Court" of the State of Virginia, and this court is therefore without power to enjoin the said Commission when engaged in the discharge of its judicial functions.

Sixth. Mere threats of a court of record cannot be enjoined. Courts can only act by their records, and only the judgments or decrees of the courts, that is the final deter-

mination of courts as shown by its records, can be enjoined.

Seventh. A Court of Equity has no jurisdiction to enjoin any court of competent jurisdiction from instituting and prosecuting criminal prosecutions for violations of State Statutes.

SAMUEL W. WILLIAMS,
Solicitor and Counsel for the Said Defendants.

Counsel for complainant waives affidavit to this paper and consents that the same shall be treated as if duly sworn to.

THOMAS A. BANNING,
For Complainant.

Order Postponing Hearing of Motion.

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

The Dalton Adding Machine Company, *Complainant,* *vs.* The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of Said Commission, *Defendants.*	In Equity. No. 88.

This day came on to be heard the application of the complainant for a preliminary or interlocutory injunction in the above entitled cause, upon notice duly served and accepted by the Governor of Virginia and the Attorney-General of Virginia, before the Honorables J. C. Pritchard, Edmund Waddill and John C. Rose, Judges, in accordance with the order entered on Tuesday, the 17th instant; and thereupon the court postponed or continued the hearing of the said mo-

tion until Saturday, the 8th day of February, 1913, before themselves sitting as the court.

The court also granted leave to the complainant to file with the clerk such affidavits in support of its motion as it might desire, requiring copies of the same to be delivered to the Attorney-General of the State of Virginia on or before the 10th day of January, 1913, and granted leave to the defendants to file with said clerk counter affidavits, requiring copies of the same to be delivered to the counsel for the complainant on or before the 25th day of January, 1913, and granted leave to the complainant to file with said clerk reply affidavits, delivering copies of the same to the Attorney-General of Virginia at any time before three full days before the time above set for the hearing.

Copies of the affidavits required to be served as above may be delivered to counsel respectively, by mailing the same on or before the dates at which they are required to be filed with said clerk.

J. C. PRITCHARD,
Circuit Judge Presiding.

Affidavits on Behalf of Complainant.

DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF VIRGINIA.

The Dalton Adding Machine Company, *Complainant,* *vs.* The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of Said Commission, *Defendants.*	In Equity. No. 88.

State of Virginia, Henrico County, ss.

HARRY C. GRUBBS, being duly sworn, on oath deposes and says: I am 27 years of age. I am engaged in soliciting orders or proposals for Dalton adding machines, manufactured by the Dalton Adding Machine Company of Poplar Bluff, Missouri. I have an office at No. 22 North Seventh St., Richmond, Va. The territory in which I solicit orders or proposals comprises the entire State of Virginia and in my work as a salesman or solicitor I travel from place to place in the State of Virginia soliciting orders for the Dalton machines. The office that I have is rented by myself and not by the Dalton Adding Machine Company, and the rent for such office is paid by me and not by the company. The lease runs to me in my own name and not to the company nor is the company mentioned therein. The office furniture belongs to me and not to the company. I pay the telephone rent myself and all of the expenses of running and conducting such office, including my assistants to aid me in soliciting the sale of machines. I receive no salary or fixed compensation from the company, but am paid simply a commission on the sale of machines effected through the solicitation of myself or my assistants. Nor are my assistants paid

any salary or commission by the company but look to me entirely for their compensation, which is in the form of a sub-commission that I allow them on the sale of machines effected through their solicitation.

I have no authority from the company to make a sale of an adding machine or to convey title to a machine and have never sold a Dalton adding machine in the State of Virginia, but have only authority to solicit offers or proposals to purchase such machines wherever I find an individual or company desirous of purchasing the same. In every instance where I have been able to secure an offer or proposal for the purchase of a machine I have had the prospective purchaser sign a printed blank like those set out at length in paragraph 2½ of the bill of complaint in the above entitled cause with the exception of a few machines purchased by railway companies which have their own printed orders or requisitions which they prefer to sign. In every instance, however, including the railway companies, the orders or proposals to purchase a machine are taken subject to the approval of the Dalton Adding Machine Company and are then sent by me to the company through the mails to its home office in Poplar Bluff, Missouri, for approval and acceptance. In no case is a sale effected or a transfer of the title to or ownership in the machine made or consummated until the company has approved and accepted the order at its home office in Missouri. There has been no deviation or departure from this method of selling the company's product or machines, but the same has been strictly adhered to by me and my assistants since I have opened my office and engaged in the business of soliciting offers or proposals for the purchase of Dalton adding machines in the State of Virginia.

I have carefully considered the statements as to the method employed by the Dalton Adding Machine Company of soliciting orders or proposals and effecting sales of its product or machines contained in paragraphs numbered 2, 2½, 3, 4 and

5 of its bill of complaint herein and am able to say of my own knowledge that the method set out in such paragraphs so far as relates to the sale of Dalton adding machines in the State of Virginia is concerned, is in accordance with the facts, and I refer to such paragraphs for a fuller and more detailed statement of the method of carrying on my work as a solicitor or salesman in the State of Virginia.

I began my work as a solicitor or salesman for Dalton adding machines in the State of Virginia and opened my office on or about the first day of February, 1912, and pursued such work in the way above explained and in no other from the beginning. During the first part of the month of August, 1912, and along about the 10th or 12th of such month, one Richard T. Wilson called at my office, No. 22 North Seventh street, Richmond, representing himself as the clerk of the State Corporation Commission of the Commonwealth of Virginia, and stated that he called on behalf of such Commission and desired to see me in reference to the company's right to do business in the State of Virginia, as I was informed upon my return to the office, having been out when Mr. Wilson called. I was told that Mr. Wilson desired me to call at the office of the Commission, and I did so that same afternoon, but did not find him in. I called the next morning and found Mr. Wilson in. I explained to Mr. Wilson the method on which I was doing business as explained above and insisted that we were doing, by which I meant not merely myself but the company also, a strictly inter-state business, as the company had been doing for several years in other states and that in no instance as I understood had the company been required to pay an entrance fee or to procure a license for carrying on its business as it was being carried on in Virginia. Nothing decisive was settled at this interview.

The call of Mr. Wilson at my office and the general interview that I had with him as above caused me to make some

investigation and to make some inquiries to enable me, if possible, to determine whether there was anything in my method and the company's method of securing sales of machines in Virginia which could render either myself or the company liable under the laws of Virginia relating to foreign corporations, and I became satisfied that neither myself nor the company was doing anything that we did not have a perfect right to do. Thereupon I again called upon Mr. Wilson and had a second interview with him at his office. At this interview he insisted that in his view I was not complying with the law of Virginia, and he requested me to write him a letter setting forth the method pursued by myself and the company, and I told him that I would refer the matter to the company for consideration and attention. This interview, like the first, resulted in settling nothing, but left the matter as it was before, except that I promised to refer the matter to the company, and he stated that he would take it up with the Commission.

In accordance with my promise I wrote the company at its home office in Missouri, explaining the situation. Since which time the matter has been conducted by others and I have not personally had charge of it.

I desire to say that the Dalton adding machine is comparatively a new machine and that it was practically unknown in the State of Virginia prior to the beginning of my work soliciting orders or proposals to purchase it. I believe, in fact, that less than half a dozen machines were in use in the State of Virginia at the time I opened my office and began my work of soliciting orders or proposals to purchase machines. In my work of solicitation I have visited a good many different places in Virginia to seek orders or proposals for the machines and in practically every instance I have found that the machine was unknown even by name. In order to secure offers or proposals to buy a machine I have found it necessary to show the machine to parties need-

ing one and explain its construction and operation, as in no other way could I interest them in the machine or secure an offer or proposal to purchase one. In some cases the only way in which an order or proposal could be secured was to allow the prospective purchaser to have a machine for a limited period to try the same to determine whether it was suitable to the requirements of his business. In these cases it was also necessary for me to teach a clerk or employee how to operate the machines, explain its capacities for doing the work of his employer's business, and matters of that kind. Allowing the prospective purchaser the privilege of testing or trying a machine was a necessity in a number of cases as otherwise it was impossible to secure an offer or proposal for its purchase. In fact, when I endeavored to secure an order for a machine from the City of Richmond the city authorities having the matter in charge required such privilege.

After a prospective purchaser had had a machine for a few days or a limited period for the purpose of trying and testing it and becoming familiar with its operation, and had decided to sign an offer or proposal to buy it, such offer or proposal designated and described the machine that he was offering to buy by its serial number, style or model, and capacity, so that the particular machine which he was offering to buy was segregated and distinguished from all other machines so that the proposal or offer when approved and accepted by the company in Missouri operated as a sale of that particular machine and no other.

HARRY C. GRUBBS.

Subscribed and sworn to before me this 18 day of December, 1912.

CHAS. E. GARRETT,
Notary Public.

Commission expires Apr. 27, 1915.

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

The Dalton Adding Machine Company, *Complainant,* *vs.* The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of Said Commission, *Defendants.*	In Equity. No. 88.

State of Virginia, Henrico County, ss.

JENNIE E. GRUBBS, being duly sworn, on oath deposes and says: I am the wife of Harry C. Grubbs, who has made an affidavit in the above entitled cause. I have read the affidavit of the said Harry C. Grubbs and am familiar with the method of carrying on the business pursued by him. In fact, I am his office assistant and have been ever since he opened an office in Richmond, Virginia. I am therefore able to say, and do say, that all of the facts stated by the said Harry C. Grubbs in his affidavit as to the method pursued by him and by the Dalton Adding Machine Company in procuring orders or proposals for the purchase of machines, the sending of such orders to the company at Poplar Bluff, Missouri, and the approval and acceptance of such orders by the company are true in every respect.

I was in charge of the office at No. 22 North Seventh street, Richmond, when Mr. Wilson, clerk of the State Corporation Commission of the Commonwealth of Virginia, called as explained in the affidavit of the said Harry C. Grubbs and personally talked with Mr. Wilson and am able to state of my own personal knowledge the substance of the conversation which we had. Mr. Wilson called and inquired for Mr. Grubbs. When I informed him that he was not in I inquired if there was anything that I could do for

him. He stated that he was the clerk of the Corporation Commission and that he wanted to see Mr. Grubbs to find out why he was doing business in the State of Virginia without a license and stated that he was liable to a fine of from one hundred to one thousand dollars, as I recollect the figures, for every transaction made in the State of Virginia. I explained to him that we were engaged strictly in interstate business and he said that if we could show them that such was the case they would have no claim against us. From Mr. Wilson's statements I was very much frightened and concerned because it seemed to me that we were in danger of having serious trouble with the Commission and I was apprehensive that the business which my husband and myself had started and on which we were dependent for our living might be injured or destroyed. From Mr. Wilson's statements and aggressive attitude I thought that proceedings to impose penalties on us was liable to be commenced immediately.

JENNIE E. GRUBBS.

Subscribed and sworn to before me this 18 day of December, 1912.

CHAS. E. GARRETT,
Notary Public.

Commission expires Apr. 27, 1915.

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

The Dalton Adding Machine Company, *Complainant,* *vs.* The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of Said Commission, *Defendants.*	In Equity. No. 88.

State of Missouri, County of Butler, ss.

JAMES L. DALTON, being duly sworn, on oath deposes and says:

I am President of the Dalton Adding Machine Company, which company is incorporated under the laws of the State of Missouri. Such company was organized or formed on or about the 8th day of July, 1903, "to manufacture and sell Adding Machines, Typewriting Machines, Adding and Writing Machines Combined, Cash Registers and all Attachments or Appliances Thereof," to quote the language of its Charter defining its purposes or objects. Since the organization of the company, and for some five years last past, it has been engaged in the actual work of manufacturing and selling adding, listing and calculating machines, together with the necessary appliances for use therefor and therewith, and selling the same throughout the various States of the United States and in many foreign countries. In short, the company has been doing and is now doing a widely extended business in the sale of such machines between its home State of Missouri and other states and foreign countries.

I have read the bill of complaint in this case and have informed myself as to its various statements and allegations. They are all substantially, and I may say literally, true and in accordance with the facts. The method of carrying on the business of the Dalton Adding Machine Company is as

is set out and described in such bill of complaint. The company carries on its business and sells all of its machines at its home office in Missouri, which sales are effected through the solicitation of salesmen, solicitors, or "drummers," as they really are, in the various States of the United States. None of the salesmen or solicitors are authorized nor do they have the power to make a sale of a machine, but only to solicit an offer or proposal to buy the same wherever they can find a party, firm or company desirous of purchasing the same, which offers or proposals are always taken subject to the approval and acceptance or rejection of the company at its home office in Missouri, and are approved and accepted or rejected and refused according to the circumstances of each particular application to buy a machine, as the same may appear, from financial or other considerations, to be advisable or otherwise. I refer to the bill of complaint herein for a general and detailed statement of the method which the company has always pursued in carrying on its business.

Early in the year 1912 the company authorized one Harry C. Grubbs to solicit offers or proposals for the purchase of its adding machines in the State of Virginia. In pursuance of such authorization the said Grubbs established his headquarters at Richmond, Virginia, and opened an office there, at No. 22 North Seventh street. The company did not rent an office either for itself or for its solicitor in Virginia, nor has it ever had an office or place of business in Virginia. The office opened by the said Grubbs was rented by himself and on his own responsibility. The rent for such office is paid by the said Grubbs and not by the company. In like manner the office furniture was purchased by the said Grubbs and belongs to him and not to the company. The said Grubbs is not paid any fixed salary or compensation by the company but only a commission upon sales effected through his efforts and solicitations. Nor does the company hire or pay any one employed by the said Grubbs to assist him in

soliciting orders or proposals for its adding machines. He employs such assistants himself and is liable to them for the payment of such commissions or compensation as he may have agreed upon between himself and them. The said Grubbs has no authority, and never has had any authority, to sell or convey the title to the company's adding, listing and calculating machines, but only authority to solicit orders or applications to buy the same, which have always and in every instance been transmitted through the mails to the company's home office in Missouri for approval and acceptance or rejection. No change of ownership or transfer of title is or has been effected until after the order or proposal for the machine has been approved and accepted by the company at its home office in Missouri. The proposals or applications to buy machines have always contained a provision that they are subject to the approval of the company, and they have never become effective until after they have been received and approved by the home office of the company in Missouri. The contract of sale is a transaction between the purchaser in Virginia and the company in Missouri, and the work and function of the salesman or solicitor Grubbs has been to solicit, drum up, and procure offers or applications for the purchase of the machines. He is authorized to solicit parties to purchase the company's machines anywhere throughout the State of Virginia, and in the prosecution of his work of solicitation he has traveled and does travel throughout the State soliciting orders or proposals to buy machines in various places. In short, the business of the said Grubbs is in reality that of a traveling or itinerant "drummer" maintaining his headquarters at Richmond, but traveling from place to place throughout the State. His compensation is simply a commission paid to him on such sales as he and his assistants working under him and at his own expense, and not at the expense of the company, are able to effect and procure. All money paid by purchasers

of machines is sent to the home office in Missouri, and all commissions are paid to said Grubbs from the home office as collections are received by the company from time to time.

At the time the Dalton Adding Machine Company was organized, and at the time it began to manufacture and sell machines, the adding, listing and calculating machines which it began to manufacture and which it has been manufacturing were a new and unknown type of machine, differing radically in construction and operation from all other adding machines then or now on the market. It was an unknown machine and a demand had to be created for it by educating the public interested in such machines as to its peculiarities of construction and modes of operation. At the time the company authorized the said Grubbs to enter upon the work of soliciting orders or proposals to buy the machines in Virginia, there were probably less than half a dozen of the company's machines in use in the State of Virginia. It was practically, not to say literally, unknown in Virginia even by name. In Virginia, as elsewhere, owing to the fact that the company's machines were unknown, either as to name, construction or operation, it was necessary, in order to procure offers or proposals to purchase the machines, that the prospective purchasers should be shown the machine and given an opportunity to have it demonstrated to them, and to have their clerks, bookkeepers, or employees become acquainted with its mode of operation, so that they could use it in the business of their employers. It was necessary, furthermore, for prospective purchasers to become satisfied that the machines were adapted to the peculiar requirements of their business and were superior in construction and operation to other makes of adding, listing and calculating machines which were on the market and sold in competition with the company's machines. No other practical way existed for introducing the machine and enlisting an interest in the same on the part of firms, companies or corporations having a

need for such machines. It was not practical nor, I may say, possible, to secure orders for machines by simply advertising the same, sending circulars or other descriptive literature, or writing letters to parties that might be considered as possibly having use for such machines. Owing to the nature and peculiarities of the machines, it was necessary that parties should see and be given an opportunity to examine, try and test the same. In order, therefore, for the company to secure orders or applications to purchase the machines in Virginia, as in other States, it has been necessary for the company to ship machines to Virginia and to other states, for the purpose of sale and in advance of procuring orders or proposals to buy the same. In every case, however, the machines were shipped to Virginia for the purpose of effecting a sale of the same, and, to enable the company to secure offers or proposals to purchase, it was and is necessary, in many cases, to allow the prospective purchaser an opportunity to test and try the machine so as to become familiar with its construction and operation and to appreciate its adaptability to the requirements of his business, as well as its superiority to other machines which were being sold in competition with it. To this end, therefore, wherever necessary in order to procure an offer or proposal to buy the machine, a prospective purchaser was allowed to test or try it for a few days or for a limited period, but such testing or trying in every case was for the purpose of creating a demand and procuring an order or application for the purchase of the machine, for which purpose and object it had been shipped into the State of Virginia. After an order or proposal was procured, as above explained, and as explained in the bill of complaint and in the affidavit of Harry C. Grubbs herein, the prospective purchaser, in case his application to buy a machine was accepted, was either shipped a machine direct from the factory of the company in Missouri, or, where he preferred, he was allowed to retain

the machine for the purpose of sale, and which he had been permitted to test and try, and with which he had become familiar, but in such cases the proposal or offer to buy the machine described it by serial number, capacity or style, so that the machine which he purchased was segregated and distinguished from all other machines in the proposal which, upon the approval and acceptance of the company, became a contract of sale for the particular machine described in it and for no other machine whatsoever. In those cases where a machine was shipped to the purchaser direct from the company's factory in Missouri, such machine took the place of the one which the purchaser had tested and tried.

The method of selling the Dalton Adding Machine Company's machines in Virginia has been the same as the method carried on by the company in other states since it began marketing its machines. It has been what I and the other executive officers of the company considered to be simply and strictly an interstate business. In several instances the Corporation Commissions or officials of other states have made inquiries and have investigated the method by which the company was effecting sales of its machines in such respective states, but in every instance, after having been informed of the method adopted and pursued by the company, it has been permitted to proceed with its business without interruption, molestation or interference. The company has been able in every instance to satisfy the State Commissions or State officials of other States that it was doing simply an interstate business, if I may judge from the fact that such Commissions and officials have, in every instance, after ascertaining the method pursued by the company for effecting the sale of its machines, dropped their claim of liability and permitted the company to continue its business as it had been doing. Yet, in each of such cases, the company's business was being carried on precisely, in every respect, as it

is being carried on in the State of Virginia. The company's machines were being shipped into the States for the purpose of sale; solicitors or salesmen were drumming up and procuring offers or proposals to buy the same; prospective purchasers were being allowed to test or try the machines; and in many cases, after offers or proposals had been secured and accepted and approved by the company at its home office in Missouri, the purchasers were allowed to retain the machines which had been exhibited to them, and which they had tested or tried and had at their place of business at the time they signed the order or proposal to purchase the same.

When the question arose as to the company's method of doing business in the State of Virginia, the matter was referred to the company by its salesman or solicitor Grubbs, and I had some correspondence with Mr. Wilson, the clerk of the State Corporation Commission of the Commonwealth of Virginia, in reference to the matter, in which I explained the company's method of effecting sales of its machines in Virginia, and I explained to him that perhaps thirty per cent. (30%) of the machines sold in the State of Virginia were machines that had been already shipped in and tested and tried by the prospective purchasers, as above explained. This letter of explanation to Mr. Wilson was dated August 16, 1912, and in my letter I suggested that I would be glad to have the views of our counsel considered by the Commission, as I felt confident that the company was doing nothing that rendered it amenable to the laws of Virginia relating to foreign corporations, and nothing that we were not fully authorized to do as a foreign corporation doing an interstate business. I received a reply to this letter and then referred the matter to the company's counsel, Mr. Banning, who thereupon had some correspondence with Mr. Wilson and with the chairman of the Commission, Mr. Prentis, which correspondence was submitted to me, so that I was kept advised of the same. This correspondence, however, failed to induce

the Corporation Commission to withdraw its claim against the company, and in a letter written the company's counsel, Mr. Banning, the chairman of the Commission, Mr. Prentis, under date of October 1, 1912, said:

> "We feel, therefore, that our duty to the State requires us to proceed against the Dalton Adding Machine Company, of Poplar Bluff, Missouri, for the purpose of enforcing the demand that it comply with the laws of Virginia applicable to foreign corporations doing business in this State.
>
> "We will not, however, take any legal step for ten days from this date, and still trust that it will be unnecessary to do so. We have no desire to be arbitrary, but simply cannot agree with you in your legal conclusions."

Although the letters written by the chairman of the Commission, Mr. Prentis, were couched in such courteous language as I should expect from a gentleman of his standing and position, yet it appeared to the company that there was imminent danger, not to say positive certainty, that proceedings were about to be commenced against the company to impose the penalties provided by the corporation laws of Virginia on foreign corporations doing business in the State of Virginia, which I considered that the company was not doing, nor in any sense doing a domestic business, nor any business that was not guaranteed to it under the commerce clause of the Constitution of the United States, and that there was imminent danger, not to say positive certainty, that the company would be put to trouble, annoyance, expense, and irreparable damage by the proposed proceedings on the part of the State Corporation Commission of the Commonwealth of Virginia, unless the company immediately complied with its demand to enter the State of Virginia under its corporation laws, pay the entrance fee required, and in other respects pay the fees and comply with the requirements of the State corporation laws authorizing foreign corporations to do or carry on a domestic business in the State

of Virginia. The company did not have and never has had any office in the State of Virginia for corporate or other purposes, and never did a domestic business in the State of Virginia, as I believed and still believe. Notwithstanding the courteous tone in which the Commission formulated its demands and requirements, I considered and still consider that it was threatening to interfere with our business as a foreign corporation carrying on an interstate business authorized and justified under the commerce clause of the Constitution, and I have no doubt that the Commission would have proceeded against the company had not the bill in this case been filed for the purpose of securing judicial consideration and determination by this court of the company's method of securing sales of its machines in Virginia, and an adjudication of its rights as they may appear on a hearing of this cause.

I have read the affidavit of Harry C. Grubbs made herein, dated December 18, 1912, as to the nature of the work that he has been doing in Virginia, in soliciting orders or proposals for the purchase of Dalton adding machines, etc., and am able to state of my own knowledge that his statements in reference to such matters are true, as they coincide with my own knowledge respecting the same.

JAMES L. DALTON.

Subscribed and sworn to before me this 26th day of December, 1912.

B. C. HARRISON,
Notary Public.

[SEAL.]
Commission expires April 18, 1916.

Affidavits on Behalf of Defendants.

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

The Dalton Adding Machine Company, *Complainant,* *vs.* The State Corporation Commision of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, J. Richard Wingfield, Members of said Commission, *Defendants.*	In Equity. No. 88.

State of Virginia, City of Richmond, ss.

ROBERT R. PRENTIS, being duly sworn on oath, deposes and says: That I am chairman of the State Corporation Commission of Virginia, and as such in the discharge of what I conceived to be the proper discharge of my official duties I wrote two letters to Thomas A. Banning, Esquire, counsel for The Dalton Adding Machine Company. Inasmuch as Mr. James L. Dalton, in his affidavit filed in this cause, quoted a part of one of those letters I feel that it is proper that both of the letters should be read as a part of the evidence upon the pending motion in this cause. This is a copy of the letter in full written to Mr. Thomas A. Banning on September 12th, 1912:

September 12th, 1912 rrp–w.

THOMAS A. BANNING, ESQ.,
of Banning and Banning, Counselors at Law,
The Marquette Bldg., Chicago, Ill.

My Dear Sir:—

Your letter of August 24th, addressed to the Clerk of this Commission, discussing the obligation of the Dalton Adding Machine Company, of Poplar Bluff, Missouri, to pay the fees required of foreign corporations doing business in Virginia, has been referred to me.

I will not attempt to follow you in your complete and thorough discussion of the cases as you construe them.

My own idea is that the Supreme Court of the United States has settled all of the principles involved, and that hence it is unnecessary to consider cases from time to time decided by the State courts or the inferior Federal courts.

I cannot agree with you in your conclusion so far as they affect the question at issue, though there is much in your letter which I would not think of contesting, because you are fully sustained by the cases.

I do not think that the "original package cases" help to solve the question, because they are cases arising under State statutes absolutely forbidding dealings in certain commodities, which the courts have construed to be an undue interference with interstate commerce.

It may be regarded as fully settled that a foreign corporation may not do local business in a State without the consent of that State, and that having the absolute power of excluding the foreign corporation a State may impose such conditions upon permitting it to do business within its limits as the legislature may judge expedient. *The Horn Silver Mining Company* vs. *New York*, 143 U. S. 305, and *Pembina Consolidated Silver Min'g. etc., Co.* vs. *Pennsylvania*, 125 U. S. 181. Many other subsequent cases could be referred to as fully sustaining this doctrine, which is so well established that I feel sure you will not deny it.

The question here involved is whether the Dalton Adding Machine Company is doing business within the State of Virginia. By doing business of course I mean doing business which is not protected by the commerce clause of the United States Constitution. We do not, of course, contest the right of that company to do interstate business within this State. Under the facts stated by the company, however, we insist that the company is doing a local business which is not interstate commerce. The company is shipping its machines into this State as its own property as samples, to be exhibited and tested by persons who may be thus induced to purchase similar machines from the company, and if this were all that the company did the State of Virginia would certainly have no right to impose any tax or condition upon the corporation, and it is useless to cite cases to sustain this proposition. It appears, however, that the company is not content to do this, but that it undertakes, after such ma-

chines have been brought into this State, ostensibly as samples and merely in aid of its interstate business, to sell these identical machines to purchasers in Virginia, the entire contract of sale being made and completed after the machines have been brought into this State. So usual is this method of transacting the business that it is admitted that thirty per cent of the machines sold in Virginia are thus sold after they have been brought into this State. Such contracts of sale, even though made on the seller's part at the home office of the company, are certainly Virginia contracts and governed by Virginia laws. The subject of the contract is in Virginia, that is, the machine, the assent of the purchaser is given in Virginia, and the machine is delivered in Virginia. It is a matter of no consequence how much or how little local business the corporation does in Virginia, for it can do no business in Virginia except that protected by the commerce clause without the assent of the State. I think that the cases of *Armour Packing Company against Lacy*, 200 U. S., page 225, *Kehrer* vs. *Stewart*, 197 U. S. page 60, *Hopkins* vs. *United States*, 171 U. S. page 578, and the *American Steel & Wire Company* vs. *Speed*, 192 U. S. page 500, are ample authority to sustain the view which I have herein expressed.

The question is not a new one to me, for I have had occasion to consider it in all its phases many times during the past five years and views similar to those which I have here expressed have been accepted by some of the largest corporations in the country under competent legal advice. Of course, I recognize the fact that there are some very nice and narrow distinctions here involved, and that it is not a difficult matter for a foreign corporation to transact its business so as to avoid all State exactions, but there is a limit which it cannot overstep. As above indicated I think that the Dalton Adding Machine Company has done and is doing a local business in this State, and it is the duty of this Commission to see that the requirements of the State laws are complied with. I trust that upon further reflection you will recognize the soundness of the views which I have expressed.

Very truly yours,

ROBERT R. PRENTIS,
Chairman.

rrp–

And this is a copy of the letter in full written to Mr. Thomas A. Banning on October 1st, 1912:

October 1st, 1912 rrp–w.

THOS. A. BANNING, ESQ.,
of Banning and Banning, Counselors at Law,
The Marquette Bldg., Chicago, Ill.

My Dear Sir:—

I have your favor of Sept'r. 24th, referring to the business of the Dalton Adding Machine Company in Virginia.

I am very glad to note that you are a grandson of Virginia and that you have not forgotten the rock-ribbed hills of Rockbridge County.

It will give me very great pleasure to see you in Richmond if you determine to come this way on your journey to Alabama.

I do not, however, think that such a visit to the Commission will change our views with reference to the legal question involved and discussed in this correspondence. You have evidently reached your conclusion, after a careful study of the cases, and nothing that I can write or say is likely to change your opinion. I have reached an opposite conclusion from what I consider a sufficient study of the principles involved, and think it unlikely that an interview with you will change my opinion.

We feel, therefore, that our duty to the State requires us to proceed against the Dalton Adding Machine Company, of Poplar Bluff, Missouri, for the purpose of enforcing the demand that it comply with the laws of Virginia applicable to foreign corporations doing business in this State.

We will not, however, take any legal step for ten days from this date, and still trust it will be unnecessary to do so. We have no desire to be arbitrary, but simply cannot agree with you in your legal conclusions.

With assurances of respect,

Very truly yours,

ROBERT R. PRENTIS,
Chairman.

rrp–

If this chancery suit had not been instituted The Dalton Adding Machine Company would have been proceeded against under the laws of Virginia upon the allegation that it was

doing business in Virginia in violation of the Virginia statute. In that proceeding evidence would have been taken by the Commission after due notice to The Dalton Adding Machine Company, in order to determine judicially whether or not The Dalton Adding Machine Company was violating the laws of this State. If that issue of fact had been determined adversely to The Dalton Adding Machine Company that company would have had the right of appeal to the Supreme Court of Appeals of Virginia, and if that decision of that court had been likewise adverse the defendant company would have had the right to take the case upon writ of error to the Supreme Court of the United States for the determination of its legal right. It is possible, though not probable, that this Commission, upon the issue of fact thus raised, might have decided the case in favor of The Dalton Adding Machine Company, as the letters were not intended to prejudge the question, but were simply written in the discharge of what this affiant believed to be his administrative duty in connection with the admitted facts. These letters, written in reply to two letters written by Mr. Thomas A. Banning, counsel for The Dalton Adding Machine Company, constitute the whole of the correspondence between this affiant and the representatives of the complainant company, and constitute the only basis for the allegations in the bill, and all allegations in the bill in conflict therewith are denied.

ROBERT R. PRENTIS.

Subscribed and sworn to before me this 23rd day of January, 1913.

SAM W. BIGGER,
Notary Public.

My commission expires on the 5th day of January, 1917.

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

The Dalton Adding Machine Company, *Complainant,* *vs.* The State Corporation Commision of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea and J. Richard Wingfield, Member of said Commission, *Defendants.*	In Equity. No. 88.

State of Virginia, City of Richmond, ss.

RICHARD T. WILSON being first duly sworn on oath deposes and says: I am the clerk of the State Corporation Commission of Virginia. Having learned that the machines of the Dalton Adding Machine Company were being sold in the City of Richmond, I, in the discharge of my duty under Section 1104 of the Code of Virginia, instituted such inquiries as led me to the conclusion that that corporation should be required to comply with the Virginia law governing foreign corporations doing business in Virginia. Accordingly I visited the office of the company, upon the window of which is this sign: Dalton Adding, Listing and Calculating Machines, and upon the door is the name "H. C. Grubbs." I had the interview with Mrs. Jennie E. Grubbs, referred to in her affidavit heretofore filed in this cause. She states substantially what occurred except that I feel sure that I was polite and considerate and I certainly did not intend to say anything to unduly alarm her, or to do anything except to discharge my official duty in a polite and considerate manner. I supposed that she was the stenographer in charge of the office in the absence of her principal, and hence the proper person with whom to leave the message which I did leave. Mr. Grubbs subsequently called on me at the office and introduced himself by presenting the card which I herewith file

as a part of this affidavit marked Exhibit No. 1. My further investigation has developed the fact that the Dalton Adding Machine Company, through H. C. Grubbs, Virginia sales manager, has made two contracts with the Southern Bell Telephone and Telegraph Company of Virginia, copies of which are herewith filed and marked Exhibits Nos. 2 and 3. One of said contracts it will be noted is a contract for advertising the said corporation in heavy faced type in the directory of the telephone company, the other being for telephone service at No. 22 North Seventh street, Richmond. That supplies, consisting of ribbons, paper, and miscellaneous supplies necessary and convenient to operate the Dalton adding machines, are supplied from the office above referred to at No. 22 North Seventh street, Richmond. That the contract under which the machines are sold guarantees the machines against defects of material and workmanship for two years and this necessitates the repair of such machines. That the contracts of the Dalton Adding Machine Company and its methods of doing business are substantially similar to the methods of the Burroughs Adding Machine Company, a foreign corporation, and with other foreign corporations operating in this State, which foreign corporations have complied with Section 1104 of the Code of Virginia. So far as I am advised no other corporation, other than the Dalton Adding Machine Company, transacting its business in this way has refused to comply with this section. I am informed that the personal property in the said office at No. 22 North Seventh street has been assessed for taxation against the Dalton Adding Machine Company and that tax has been paid for the year 1912.

R. T. Wilson.

Subscribed and sworn to before me on this 23rd day of January, 1913.

Sam W. Bigger.

My commission expires on the 5th day of January, 1917.

(R. T. WILSON) EXHIBIT No. 1.

Phone: Madison 1017 "The Machine that does things"

DALTON ADDING, LISTING AND CALCULATING MACHINES.

22 N. Seventh St.

H. C. Grubbs,
Virginia Sales Manager. Richmond, Va.

(R. T. WILSON) EXHIBIT No. 2.

ORIGINAL.

SUPPLEMENTAL CONTRACT. 9006

[Heavy Face Type.]

The Subscriber requests the Southern Bell Telephone and Telegraph Co. of Virginia, subject to his contract No. Mod 1017, with said Company, dated February 5, 1912, to list in its Directory in heavy face type, similar to that now used for "call numbers," his name and address for which the subscriber agrees to pay, in addition to the amount named in said contract, THREE DOLLARS PER ANNUM, in advance from the date of the first publication.

This request may be terminated by thirty days' previous notice in writing to the Company from the Subscriber, or from the Company to the Subscriber.

(Subscriber) DALTON ADDING MACHINE CO
H C GRUBBS Va Sales Mgr

Accepted May-8-1912 190 , by Southern Bell Telephone and Telegraph Co. of Virginia.

BY A. S. TANNER

May 20-1912
WYTHE WHITE 5-8-12
May 8-12 Paid

(R. T. WILSON) EXHIBIT No. 3.

ORIGINAL

CONTRACT FOR MESSAGE RATE TELEPHONE SERVICE.

THE SUBSCRIBER requests the Southern Bell Telephone and Telegraph Company of Virginia (herein styled the "Company") to establish at 22 N. 7th St in the City of Richmond, Va. a Special Line metallic circuit telephone station, maintain the same and the wires connecting it with the Company's Exchange, and furnish service to the Subscriber, his agents and representatives only, for one year from the first day of the month following the connection of the station, and thereafter until this contract is terminated as herein provided; and agrees to pay for such maintenance, etc., and the right to send in each calendar month One Hundred (100) local messages, Three dollars in advance and for additional local messages Three cents each, for the fraction (if any) of the month in which the station is connected, or this contract is terminated, proportionately at said rate; and for foreign messages such tolls as are now or may be established, all of said payments to be made monthly. The Company agrees that when its charges, for said local messages, during any calendar month shall aggregate Seven Dollars ($7.00), no further charge shall be made for additional local messages during the remainder of said month.

The subscriber also agrees to pay .....
dollars, monthly in advance for .....

.....

.....

A "Local Message" is a personal communication, five minutes or less in duration, from said station to another station connected with an exchange of the Company in said city; a "Foreign Message" is a personal communication, of such duration as is now or which from time to time may be established, from said station to a station connected with any exchange or toll line outside of said city. All words herein referring to the Subscriber shall be taken to be of such number and gender as the character of the Subscriber may require.

If the service is interrupted otherwise than by the negligence or wilful interference of the Subscriber a rebate at the monthly rate hereinbefore specified shall be made for

the time such interruption continues after reasonable notice in writing to the Company, but no other liability shall, in any case, attach to the Company. The instruments and lines shall be carefully used and only as herein stated, and no instrument or appliance not furnished by the Company shall be attached to or used in connection with them. For the purpose of inspecting, repairing or removing the instruments or line, the Company and its servants may have access thereto any reasonable hour.

Either party may terminate this contract at or after the expiration of the first year by not less than 30 days' previous notice in writing to the other party. Upon non-payment of any sum due, the abandonment of the station, or any violation hereof, the Company may, without notice, terminate the Subscriber's rights hereunder, sever the connection and remove the instruments.

This request becomes a binding contract when accepted by the Company's Manager, by his signature hereto, or by establishing the said station. The conditions on the back hereof are made a part of this contract, and its terms cannot be varied or waived by any representations or promises of any canvasser or other person, unless the same be in writing and signed by said Manager.

(Subscriber) DALTON ADDING MACHINE CO
H C GRUBBS, Va Sales Mgr

Attest WYTHE WHITE
1-31-12

Accepted Feb 5-1912 191 by the Southern Bell Telephone and Telegraph Co. of Virginia,

BY A. S. TANNER
Manager

Approved .....

I, J. H. LAWDER, Dept. Com. Rev. City Richmond, left tax papers at #22 N. 7 for the Dalton Adding Machine Co., H. C. Grubbs, Mgr. on March 2d, 1912, said papers had not been returned at the time of closing tax books for 1912, assessment of $200 value was placed against the firm, as I found about that amt. of value at time of leaving papers.

Tax on the assessment has been paid to City Treasurer for 1912 by Dalton Adding Machine Co.

(Sgd.) J. H. Lawder, D. C. R.

Subscribed and sworn to before me this 23rd day of January, 1913.

(Sgd.) Isaac Held,
Notary Public.

Complainant's Rebuttal Affidavits.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

The Dalton Adding Machine Company, *Complainant,* *vs.* The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of Said Commission, *Defendants.*	In Equity. No. 88.

State of Missouri, County of Butler, ss.

JAMES L. DALTON, being duly sworn, on oath, deposes and says:

I am the same James L. Dalton who gave an affidavit, dated December 26, 1912, on behalf of the complainant in this cause.

I have read the affidavits of Robert R. Prentis, Richard T. Wilson, and J. H. Lawder, all dated January 23, 1913, on behalf of the defendants in this cause, and have acquainted myself with their contents.

The tax referred to in the affidavit of the Deputy Commissioner of Revenue Lawder as assessed against the property at the office of Grubbs, No. 22 N. Seventh street, Richmond, must have been against the office furniture which belongs to Grubbs. The tax, if paid, must have been paid by Grubbs, as it was not paid by the complainant, and if it was assessed by the Commissioner in the name of the complainant, it was improperly assessed, and if it was paid in the name of the company, it was paid by Grubbs out of his own personal funds, and as his own personal obligation, as he has never asked to have it refunded to him, nor has it ever been refunded to him. From an examination of the

complainant's books, I am able to state positively that the complainant has never paid any tax of any kind in Virginia, nor has it paid Grubbs for any tax paid by him in Virginia. The complainant never heard of the tax referred to until receiving the affidavits of Wilson and Lawder in which it is mentioned.

As to the card attached to the affidavit of Mr. Wilson, describing the salesman Grubbs as "Virginia Sales Manager," this was Grubbs' personal calling card, no doubt used by him in introducing himself to parties on whom he called to solicit the purchase of a machine from the complainant. It speaks of "Dalton Adding, Listing and Calculating Machines," but it nowhere mentions the name of the complainant, "The Dalton Adding Machine Company." It refers to the complainant's machines, and no doubt the salesman Grubbs, in the use of the cards referred to, desired to represent himself as the chief salesman or "Manager" of the sales of the machines in the State of Virginia. As already said, however, it was the personal business calling card of Grubbs and not the card of the complainant.

The copies of the contract and supplemental contract with the Southern Bell Telephone & Telegraph Company of Virginia, exhibited with Mr. Wilson's affidavit, appear on their face, and no doubt they are correct copies, to be signed "Dalton Adding Machine Co., H. C. Grubbs, Va. Sales Mgr." As stated in the affidavit of the salesman Grubbs, the telephone rent is paid by him and not by the complainant, either in whole or in part. The contracts referred to were made by him without the knowledge of the complainant. In fact, the complainant knew nothing about the contracts, nor how they were made, nor how they were signed, until copies of the same were exhibited with the affidavit of Mr. Wilson. I do not know why Grubbs signed the name of the complainant to the contracts, as he had not asked and had not received any authority to sign the name of the company to the contracts.

but did so on his own motion or initiative, and presume that his object in signing the contracts as he did, and particularly the one for the name of the company in the telephone directory, was that he thought it would facilitate his work of soliciting orders for the company by thus advertising it. But however that may be, the making of the contracts was not the act of the complainant and they were not made by its authority or with its knowledge or consent.

As to the statement in the affidavit of Mr. Wilson to the effect that ribbon, paper and miscellaneous supplies are supplied from the office of the salesman Grubbs, I have to say that these things are a mere bagatelle and trifle compared with the sale of complainant's machines. The complainant is not in business for the sale of rolls of paper or ribbons or such things, but for manufacturing and selling its adding, listing and calculating machines. The purpose and object of its business existence and activity is the manufacture and sale of machines. However, for the convenience of the users of its machines, and as a mere incident to its main business of selling machines, it supplies its salesmen with a few inking ribbons and a few rolls of paper, so that when the user runs out of one or the other he can be immediately supplied without being required to wait until the same can be shipped to him from the factory in Missouri. Even in this case, however, the furnishing of the supplies to a customer by the salesman is reported to the office in Missouri, and the bill for the same made out and sent from the Home Office. I may say that this is the first time that the defendants have mentioned or complained of this matter, as heretofore and until the filing of Mr. Wilson's affidavit, all specified grounds of complaint have related to the sales of machines, presumably because the supplying of rolls of paper and ribbons to customers has been a mere incident to the main business of selling machines, and because it was trifling in amount and was done for the convenience and accommodation of pur-

chasers of machines, and not as a matter of profit to the complainant. Indeed, there has been no attempt on the part of the complainant to make a profit in this matter or to do more than cover the expense of furnishing the supplies to the purchasers and users of its machines, as it depended upon that phase of the business for its profits.

To show that the complainant fully explained its method of doing business to the defendants, and had endeavored in good faith to avoid litigation, and had sought to satisfy the defendants that its business was purely interstate business, I will quote from a letter that I wrote Mr. Wilson, Secretary of the Corporation Commission, on August 16, 1912. In that letter, written on behalf of the complainant, I said:

> "The Dalton Adding Machine Company is a Missouri corporation, manufacturing and selling adding machines which it ships into other states, and for that matter into all parts of the world, to all responsible parties who may order them. It maintains no branch offices anywhere. In fact, the only office that we have is the one here at Poplar Bluff.
>
> "We do give certain salesmen the exclusive right to solicit orders for our machines in certain prescribed territories. These sales agents, as we term them, usually rent an office in some central point in their territory which they pay for out of their own funds, and from that office which they make headquarters they solicit orders for Dalton Adding Machines, which orders are always taken subject to the approval of the company at Poplar Bluff, and in no instance are they binding until they have been thus approved. In order that you may familiarize yourself with our orders I am herewith enclosing the two forms that we use.
>
> "When an order has been received at this office and approved by the proper department, an invoice is mailed to the customer and the machine shipped direct from here to fill the order, except that in some instances the orders sent in by our salesmen specify the particular sample machine which the purchaser at the time has on trial. Without taking the trouble to go through the records, I feel safe in saying that the orders sent in by salesmen specify the particular machine on trial in about thirty per cent. of the instances where sales are made.

"Now getting down specifically to the situation in your own state: Mr. H. C. Grubbs has the exclusive right to solicit orders for our machines in that territory. His only compensation consists in commissions that he receives on sales made by him in his territory. He is not our agent in any sense of the word, as no authority is given him to even sell a sample machine and receive the cash for it without first submitting the order to this office for approval.

"The office which Mr. Grubbs occupies is rented on his own personal account, and paid for out of his own personal funds. He is a citizen of your state and votes and pays taxes there.

"We are anxious to obey the laws of your state as well as the laws of every other state, and in view of the fact that our business is strictly interstate, and in view of the further fact that we do not maintain an office or branch office elsewhere than in Poplar Bluff, Mo., and in view of the still further fact that no one outside of the City of Poplar Bluff, Mo., has authority to represent the company in any capacity other than solicit orders subject to its approval at its home office, we do not believe that we are doing business in your state in the meaning of the statute."

The order blanks referred to in my letter to Mr. Wilson were similar to the two for cash and time sales set out in paragraph 2½ of the bill of complaint herein.

In the letter from which I have quoted above, I also informed Mr. Wilson that we had had similar claims made by the corporation authorities of other states, but after explaining to them our methods of doing business, they had in every instance conceded that our business was purely interstate business and had refrained from troubling us further. I also suggested that I would like an opportunity for our counsel, Mr. Banning, to submit a brief on the subject if the Commission still considered that we were in any way amenable to the statutes of Virginia.

In reply to my letter above, Mr. Wilson, under date of August 19, 1912, on behalf of the Commission, wrote me as follows:

"We have your letter of August 16th explaining the

method of your corporation in carrying on its business in this state, and I beg to advise you that we have had very considerable experience as to matters of this character in connection with our statute, and we feel that your explanation is not satisfactory.

"The fact that you indicate that as much as 30% of the machines sold in this state have been previously shipped into this state without being sold and are delivered by your representative directly after he makes the sale, indicates, we think, that your corporation is violating section 1104 of the Code of Virginia, and is going far beyond any authority vested in it by the commerce clause of the Federal Constitution.

"We are always open to enlightenment, and shall be very glad to have the brief prepared by your counsel, though we presume it is a matter that has been gone over time and time again in this office."

In reply to the above letter from Mr. Wilson, I again wrote him, on August 21, 1912, and among other things said:

"As I stated in my previous letter, we want to obey the laws, not only of your state but of every other state in the Union, and when Mr. Banning has had an opportunity to study your laws in connection with the Fedeal Statutes applying to Interstate Commerce, he will advise us fully as to whether or not our plan of business is in violation of your law. If he advises that we are violating the Virginia laws, you may be sure that we will at once proceed to settle with you in accordance with such plan as may be mutually agreed upon.

"If it is a violation of the Virginia laws for the Dalton Adding Machine Company to sell at its Poplar Bluff, Missouri, office an adding machine which at the time of the sale is in an office of a citizen of your State, then there is no doubt but that we have violated your laws, for, as I stated in a previous letter, about 30% of our sales are made in this way. Of course, your attorneys in construing a sale of the kind above mentioned, will not overlook the fact that sale of this particular machine is really made in Poplar Bluff. In other words, Mr. Grubbs, who represents us in that section in the matter of soliciting orders for our machines, has no power to sell even one of his sample machines for the cash and deliver a perfect title thereto. His only powers are to

solicit and send in orders subject to the approval of this company, and when the orders are received, the machines are invoiced from here and checks are all made payable here. If he should sell a machine and receive the full purchase price for it in cash, he could not deliver a title, and this company would have a perfect right to demand the return of its machine, provided it went into the hands of an objectionable party, under such conditions as those herein mentioned."

After the above correspondence, our counsel, Mr. Banning, took up the matter, and on August 24, 1912, wrote Mr. Wilson submitting a brief, and this resulted in the correspondence between him and Mr. Prentis, the chairman of the Commission, during which the two letters quoted in the affidavit of Mr. Prentis were written by him to Mr. Banning.

It was only after the complainant had exhausted every effort to satisfy the defendants that its business was a legitimate and constitutional one, and after it became evident that proceedings would be commenced by the defendants, as stated in the letter of Mr. Prentis of October 1, 1912, that the complainant felt that the filing of the bill in this case was necessary to protect it in its constitutional rights and save it from the irreparable loss and injury that it felt would follow the almost certain result of the proceedings which the defendants were threatening to institute. After reading the affidavit of Mr. Prentis I am more than ever satisfied that the complainant was fully justified in taking the initiative and filing the bill bringing the matter directly into the cognizance of the Federal courts.

I note that Mr. Wilson, in his affidavit, refers to the fact that the Burroughs Adding Machine Company has taken a license, or entered the State of Virginia under its corporation laws, and that he says that the business of that company is conducted on substantially the same lines as is the business of the complainant. While I regard this as a wholly immaterial matter, yet I think it well to state that my understanding of the way the Burroughs company conducts its

business in Virginia does not agree with the understanding of Mr. Wilson. From my position as president of the complainant company, since its organization, I have become very familiar with the manner in which the Burroughs company conducts its business, as we have come into competition with the Burroughs machine in hundreds of instances, in Virginia and throughout the United States generally. I have been informed, and I understand and believe it to be the fact, that the Burroughs company has a regular and established place of business at Lynchburg, Virginia, if I recollect the name of the place correctly, in charge of a regular, responsible, salaried agent or manager, under whose authority and direction the business is conducted in Virginia; that such place of business constitutes the headquarters or distributing point where a stock or supply of machines is kept constantly on hand; and that the salesmen or agents of the Burroughs company are authorized to and do make sales in Virginia from the headquarters or supply depot, without being required to transmit or refer the orders or proposals to purchase a machine to the home office of the company in Detroit, Michigan, so that the transaction in every case of a sale in Virginia is a completed and consummated transaction, in which the title to the machine passes by the act of the selling agent, without being required to be first approved and accepted in Michigan, so that there is wholly lacking in the transaction the element of interstate negotiation and contract, which circumstance wholly differentiates the method of business employed by the Burroughs company from that employed by the complainant.

JAMES L. DALTON.

Subscribed and sworn to before me this 31st day of January, 1913.

B. C. HARRISON,
Notary Public.

My commission expires April 18th, 1916.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

The Dalton Adding Machine Company, *Complainant.* *vs.* The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of Said Commission. *Defendants.*	In Equity. No. 88.

State of Virginia, County of Henrico, ss.

HARRY C. GRUBBS, being duly sworn, on oath deposes and says:

I am the Harry C. Grubbs who made an affidavit in this case on or about the 18th day of December, 1912.

As stated in my other affidavit, I began my work as a solicitor or salesman for Dalton adding machines in the State of Virginia on or about the first day of February, 1912, so that I have now been engaged in such work for one year last past. During this time I have become pretty familiar with the manner in which the Burroughs Adding Machine Company conducts its business in the State of Virginia, as I have many times in my solicitation of orders or proposals for Dalton machines come into competition with the Burroughs machine and with the salesmen of the Burroughs company. My understanding, and I believe that my understanding is correct, is that the Burroughs company has a regular and established place of business at Lynchburg, Virginia, as I recollect the place, in charge of a salaried department head or other responsible employee, where a depot or supply of machines is constantly kept on hand, so as to constitute a distributing point; and the agents or salesmen of the Burroughs company make sales of the Burroughs machines directly and outright, and receive the money for them,

and pass the title to them, without the necessity of referring or transmitting the offers or proposals to buy to the home office of the company at Detroit, Michigan, for approval, acceptance, or rejection, so that whenever a sale of a Burroughs machine is secured, the negotiations and transactions are not only conducted in the State of Virginia but are completed and consummated in such State, without the participation of the Burroughs company in Michigan. This, as has been fully pointed out in my other affidavit, is not the way that I effect sales of the complainant's machines, as I have no authority whatever to complete a transaction, or receive the money for a machine, or to do more than solicit a proposal or order, which I then in every case refer and transmit to the home office in Missouri, for approval, acceptance, or rejection.

In reference to the contracts that the Southern Bell Telephone & Telegraph Company of Virginia, referred to by Mr. Wilson in his affidavit, the one for telephone service at my office, No. 22 North Seventh street, Richmond, and the other for the insertion in its directory of the name of the complainant, and which contracts appear to be signed "Dalton Adding Machine Co., H. C. Grubbs, Va. Sales Mgr.," I have to say that such contracts were made and signed by me on my own responsibility and without referring the matter to the complainant, and without consultation with or authority from the complainant. In fact, the complainant was never informed one way or the other about the matter. I desired the name of the company to appear in the telephone directory, to facilitate the convenience of persons who might desire to communicate with me over the telephone, and who would naturally and more readily remember the name of the company whose machines I was selling than my own. As stated in my other affidavit, the telephone rental or charges have always been paid by me out of my own personal funds and in no part by the complainant. But as already said, I

had no authority from the complainant to sign its name to these telephone contracts in the way that I did, and did so on my own initiative or motion.

In reference to the business card that Mr. Wilson says I handed him when I called at his office, as detailed in my other affidavit, I have to say that such card was my own personal business calling card and did not contain the name of the company, but simply the name of the Dalton machines for which I was soliciting purchasers. Such cards did not say that I was "Manager" for the complainant, but simply that I was "Virginia Sales Manager," that is manager for Virginia sales, which I considered as true, inasmuch as I was the head solicitor, and any assistants that I employed were under my control or management. In short, I was managing the business of soliciting sales for the complainant's machines in the State of Virginia, and I saw nothing improper in using a personal business calling card which informed the public that the matter was under my charge, control or management.

In reference to the statement in Mr. Wilson's affidavit that ribbons, paper, and miscellaneous supplies, necessary and convenient in the operation of the Dalton machines, are supplied from my office, I desire to say that these matters are a mere incident to the complainant's business and are trifling and insignificant in amount as compared to the sale of machines. To show this, I will state that while I have solicited sales of machines amounting to over fifteen hundred dollars ($1,500.00) per month, or an aggregate of eighteen thousand one hundred fifty dollars ($18,150.00) during the year that I have been at work on the matter, the sale of paper, ribbons, and other supplies have amounted to barely eight dollars ($8.00) per month, or scarcely more than one-half of one per cent. of the business done. I kept a few ribbons and a few rolls of paper in my office, so that when purchasers and users of machines required the same they could be immediately supplied, without waiting for

their shipment from Missouri. But notwithstanding this, the sales of such supplies were reported to the Home Office in Poplar Bluff, and the bills for the same were sent to the purchasers direct from the home office. No bills were issued from my office. Not only were these supplies furnished as above for the convenience of users of the machines, but they were furnished to them at about if not quite cost. They did not constitute the main or practically any of the reasons, ends, objects or purposes of the complainant's employment of me as a solicitor, or any incentive to me in my activity and work.

HARRY C. GRUBBS.

Subscribed and sworn to before me this 31st day of January, 1913.

CHARLES E. GARRETT,
Notary Public.

My commission expires April 27, 1915.

71 & 72 *Chancery Subpœna.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

The President of the United States of America to the State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of said Commission, Greeting:

We command you, and every one of you that you appear before our Judge of our District Court of the United States of America, for the Eastern District of Virginia, at the Court Room in the Post Office Building in the City of Richmond, in said District, on the First Monday in the month of November next, to answer the Bill of Complaint of The Dalton Adding Machine Company, this day filed in the Clerk's Office of said Court, in said City of Richmond, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Eastern District of Virginia to execute:

Witness, the Hon. Edmund Waddill, Jr., Judge United States District Court for the Eastern District of Virginia, at Richmond aforesaid, this 10th day of October, in the year of our Lord one thousand nine hundred and twelve, and of our Independence the 137th.

[Seal of Court.]

JOSEPH P. BRADY, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that unless they enter their appearance in the Clerk's Office of said Court, at Richmond aforesaid, on or before the day to which the above writ *of* returnable, the Complaint will be taken against them as confessed, and a decree entered accordingly.

JOSEPH P. BRADY, *Clerk.*

73 *Marshal's Return on Chancery Subpœna.*

Executed this 11th day of October, 1912, by delivering to Robert R. Prentis, William F. Rhea and J. Richard Wingfield, State Corporation Commissioners, the within named Defendants, in person, a true copy of this Writ.

CLARENCE G. SMITHERS,
U. S. Marshal.
By J. F. MARCHANT, *Deputy Marshal.*

Motion to Strike Out Demurrer and Proof of Service.

Filed November 20th, 1912.

In the District Court of the United States for the Eastern District of Virginia.

In Equity. No. 88.

THE DALTON ADDING MACHINE COMPANY, Complainant,

vs.

THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of said Commission, Defendants.

Hon. Samuel W. Williams, Solicitor for the Above-named Defendants:

Please take notice that I am filing a motion in the above entitled cause of which a copy is hereto attached, and that I shall call up such motion for disposition at the time arguments are heard on the demurrer and plea filed by you in the above entitled cause, or at such earlier date as may suit the convenience of the court after due notice to you of the same.

THOMAS A. BANNING,
For Complainant.

74 STATE OF ILLINOIS,
County of Cook, ss:

Walter Hoeltje, being duly sworn on oath deposes and says; that he served the above notice and the motion referred to therein by placing a copy of such notice and motion in an envelope addresses Hon. Samuel W. Williams, Attorney General, Richmond, Virginia, duly sealing and stamping the same and depositing it in the United States Post Office at Chicago, this 18th day of November, 1912.

WALTER HOELTJE.

Subscribed and sworn to before me this 18th day of November, 1912.

[NOTARIAL SEAL.] FRANCES M. FROST,
Notary Public.

In the District Court of the United States for the Eastern District of Virginia.

In Equity. No. 88.

THE DALTON ADDING MACHINE COMPANY, Complainant,

vs.

THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of said Commission, Defendants.

Now comes the complainant, by its solicitor, Thomas A. Banning, and moves the Court for an order striking from the files the de-

murrer heretofore filed in this cause, or, in lieu of this, for an order requiring the defendants to elect whether they will stand on the demurrer or on the plea heretofore filed in this cause.

THOMAS A. BANNING,
For Complainant.

75 *Order Granting Leave to Amend Bill of Complaint.*

Entered and Filed November 26th, 1912.

District Court of the United States, Eastern District of Virginia.

In Equity. No. 88.

DALTON ADDING MACHINE COMPANY
vs.
THE STATE CORPORATION COMMISSION, etc., et al.

Now comes the Complainant by its solicitor, Thomas A. Banning, and moves the Court for leave to amend its bill of complaint herein by adding thereto a paragraph to be numbered 2½, and upon consideration thereof it is ordered by the Court that such leave be granted.

Richmond, Va., Nov. 26", 1912.

EDMUND WADDILL, JR.,
U. S. Dist. Judge.

Motion for Interlocutory Injunction and Acceptance of Service.

Filed December 17th, 1912.

In Equity. No. 88.

THE DALTON ADDING MACHINE COMPANY, Plaintiff,
v.
THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of said Commission, Defendants.

To His Excellency Wm. Hodges Mann, Governor of Virginia, and Hon. Samuel W. Williams, Attorney General of Virginia:

76 Please take notice that I shall on Wednesday, the 18th day of December, 1912, at 10 o'clock A. M., of the said day, or as soon thereafter as the Court shall be able to hear us, at the U. S. District Court Room in the City of Richmond, move the Judge of the District Court for the Eastern District of Virginia, for an interlocutory injunction against the said defendants in said Bill restraining and enjoining them from proceeding against the said plaintiff as prayed for in said Bill of Complaint.

THOMAS A. BANNING,
For Complainant.

We acknowledge legal service of the above notice.

WM. HODGES MANN,
Governor of Virginia.
SAMUEL W. WILLIAMS,
Attorney General of Virginia.

District Court of the United States, Eastern District of Virginia.

Entered and Filed December 18th, 1912.

District Court of the United States, Eastern District of Virginia.

In Equity. No. 88.

THE DALTON ADDING MACHINE CO.

vs.

THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH OF VIRGINIA et al.

Now comes the Complainant by its solicitor, Thomas A. Banning, and moves the Court to postpone the hearing of the Demurrer and Plea heretofore filed by the defendants until after the determination of the motion for an interlocutory injunction, this day set for hearing, or until the further order of the Court and upon due consideration thereof it is so ordered.

Richmond, Va., Decr. 18", 1912.

EDMUND WADDILL, JR.,
U. S. Dsitrict Judge.

77 *Motion to Dismiss Bill of Complaint.*

Filed February 8th, 1913.

District Court of the United States for the Eastern District of Virginia.

In Equity. No. 88.

THE DALTON ADDING MACHINE COMPANY, Complainant,

vs.

THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of said Commission, Defendants.

The defendants now come and enter a qualified appearance in this cause for the purpose of objecting to the jurisdiction of the Court, and for that purpose only, and insists that the Court ought not to take jurisdiction of this cause and ought not to grant the preliminary or interlocutory injunction prayed for in the Bill, for the reason that the Court is without jurisdiction or authority to hear or to determine the cause; and the said defendants now move the Court to dismiss the said case for the following reasons:

1st. For want of equity on the face of the Bill which would warrant this Court in granting such injunction; and it is respectfully submitted on both phases of the case as above set forth that this Court is without jurisdiction to hear and determine any question raised by the Bill upon the following grounds:

First. That the said complainant has not, in and by the said Bill, made or stated any such case as doth or ought to entitle it to any such relief as is hereby sought and prayed for;

Second. That these defendants have no personal or individual interests in the matters and things referred to in said Bill;

78 Third. That the said complainant has an adequate remedy at law;

Fourth. That this Court has no jurisdiction to hear and determine this cause for the reason that this is a suit against the State of Virginia;

Fifth. That this Court has no jurisdiction to hear and determine this cause, for the reason that the State Corporation Commission, when hearing and alleged violation of the penal statutes of Virginia referring to foreign corporations, with the view of determining whether a fine should be imposed upon such corporation for a violation of such statutes, is a "Court" of the State of Virginia, and this Court is therefore without power to enjoin the said Commission when engaged in the discharge of its judicial functions;

Sixth. Mere threats of a Court of record cannot be enjoined. Courts can only act by their records, and only the judgments or decrees of the Courts, that is the final determination of Courts as shown by its records, can be enjoined.

Seventh. A Court of Equity has no jurisdiction to enjoin any Court of competent jurisdiction from instituting and prosecuting criminal prosecutions for violation of State statutes.

SAMUEL W. WILLIAMS,
Solicitor and Counsel for the said Defendants.

Subscribed and sworn to before me by Samuel W. Williams this the 6th day of February, 1913.

T. GRAY HADDON,
Notary Public for City of Richmond, Virginia.

79 *Proceedings in Court.*

February 8th, 1913.

In Equity. No. 88.

THE DALTON ADDING MACHINE COMPANY, Complainant,
versus
THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of said Commission, Defendants.

This cause came on this day to be heard on the application of the Complainant for a preliminary or interlocutory injunction, the

Court consisting of the Honorables J. C. Pritchard, Circuit Judge, and Edmund Waddill, Jr., and John C. Rose, District Judges, in conformity with the provisions of an Act entitled "An Act to Codify, Revise and Amend the Laws relating to the Judiciary," and having heard read the affidavits in support of said application, as well as those in opposition thereto, and arguments of counsel, the Court takes time to consider of its judgment herein.

February 8th, 1913.

80 *Opinion of the Court.*

Filed March 31st, 1913.

In the District Court of the United States for the Eastern District of Virginia, at Richmond.

THE DALTON ADDING MACHINE COMPANY, Complainant,

vs.

THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH OF Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of Said Commission, Defendants.

Motion for Preliminary Injunction.

Before Pritchard, Circuit Judge, and Waddill and Rose, District Judge.

Thomas A. Banning, of Banning & Banning, Solicitor for Complainants, and Samuel W. Williams, Attorney General, and Richard B. Davis, Assistant Attorney General, for the Defendants.

Argued —— ——, 1913. Decided March —, 1913.

PRITCHARD, *Circuit Judge:*

This is a motion for a preliminary or interlocutory injunction made in pursuance of Section 266 of the New Judicial Code.

The bill alleges that complainant is a corporation organized and existing under and by virtue of the laws of the State of Missouri; that it is a citizen and resident of that State with its principal office in Poplar Bluff; that it has been engaged in the business of manufacturing and selling what is known as adding, listing and
81 calculating machines; that it has spent more than One Million Dollars in experimental work, the building of a factory the construction, purchase and installation of special tools, machinery, etc., and has at all times been engaged in interstate commerce; that it has not in any manner conducted or carried on its business outside of the State of Missouri; that it has sold its machines through salesmen or solicitors, who are merely "Drummers" authorized to solicit orders for, or proposals to purchase its machines; has appointed a salesman or solicitor in the State of Virginia for the purposes aforesaid; that only sales have been made by virtue of his

personal solicitation or of those employed to assist him in securing orders; that the said salesman is located at Richmond, Virginia; that he is not a clerk or employee of the complainant and is not paid a fixed compensation or salary; rents his own office, bears his own expense; pays salary or commission to those employed to assist him; his only compensation being on sales effected and collections made; "that neither he nor those working under him have power to actually sell a machine or convey title thereto, and that he has not sold or conveyed title to any machine and that his power and the power of those whom he employs is expressly limited to merely soliciting orders or proposals to purchase machines, which orders are taken on printed blanks or forms furnished him by complainant, which forms contain, and have always contained the words, 'This order subject to approval of the company,' which orders amount only to an offer or proposition to purchase a machine, on the part of the person, firm, company, or corporation desiring to buy; that after such offers or proposals are signed by the party desiring to purchase a machine, they are sent by the solicitor or salesman to the Home Office of your Orator at Poplar Bluff, Missouri, for approval and acceptance; that your orator thereupon considers
82 the offers or proposals to purchase, and has accepted some and has rejected some sent to your orator by its salesman or solicitor from Virginia and other States, as your orator has found the terms of payment the responsibility of the purchaser, and similar matters satisfactory or otherwise; that all checks and moneys are likewise forwarded to the Home Office of your orator at Poplar Bluff, Missouri, and the commission- due the salesman or solicitor in Virginia, as well as in other states, are paid by your orator from time to time from its Home Office in Missouri, as collections are received; that in no case is any title vested in the prospective purchaser in or to the machine which he is proposing to buy, but the same remains the property of your orator until your orator has accepted the offer or proposal and received the money in full therefor."

It is not alleged that the Corporation Commission of Virginia has required plaintiff to pay any license tax, or that any fines have been imposed upon it for violation of the Statute, nor does it appear that any summons has been issued against plaintiff to show cause why it should not be proceeded against for violation of the Statute.

The principal ground relied upon for relief is based upon the allegation that the State Corporation Commission has threatened to begin a suit or take proceedings against complainant to enforce the provisions of the statute to which reference is made. In other words that the Chairman of the Commission has intimated that plaintiff's method of transacting business brings it within the purview of the statute, and that under the law it is required to take out a license and pay a license fee.

The Section of the Virgina Acts relating to this subject *are* to be found in the Virginia Code, annotated Supplement, 1910, as *are* in the following language:

83 "SEC. 1104. Every company to keep an office in this State for payment of claims to residents; foreign company to ap-

point agent on whom process may be served; copy of charter with power of attorney, to be filed, etc.; license; fees.

"Every incorporated company doing business in this State shall have an office in the State, at which all claims against the company due residents of the State may be audited, settled and paid. Every such company incorporated under a jurisdiction beyond the limits of this State (and hereinafter designated as a foreign corporation) shall, before doing business in this State, present to the State Corporation Commission (*a*) a written power of attorney, executed in duplicate, appointing some person residing in this State its agent, upon whom all legal process against the corporation may be served, and who shall be authorized to enter an appearance in its behalf; (*b*) two duly authenticated copies of the charter of the corporation; and (*c*) a certificate of the auditor of public accounts, showing the payment into the treasury of the fee required by law to be paid by such corporation; and shall obtain from said Corporation Commission a certificate of authority to transact business in the State. If it shall be made to appear to the State Corporation Commission that said corporation has complied with the law relative to the obtaining of a certificate of authority for foreign corporations of the character of the applicant corporation, then said Corporation Commission shall issue to said corporation a certificate of authority to transact business in the State. Said Commission shall file and preserve in their office one copy each of the power of attorney, charter, certificate of the auditor, and a certificate of the commission granting such certificate of authority, and forward copies of said documents to the Secretary of the Commonwealth, who shall file and preserve the same in his office. Whenever, by reason of his removal from the State or from any other cause, the powers of such resident agent shall be terminated, then such foreign corporation shall by like written power of attorney, executed in duplicate and filed with the Corporation Commission as above provided, appoint another resident agent; one copy of such power of attorney shall be filed and preserved in the office of the Corporation Commission and the other copy thereof transmitted to the secretary of the Commonwealth to be filed in his office. If the charter of any foreign corporation thus authorized to transact business in this State is amended, two duly authenticated copies of such amendment shall be presented to the Corporation Commission and filed as copies of the original charter are required to be filed, and the fee required by law on such amendment shall be paid in the manner prescribed by law. Any foreign corporation which has heretofore paid the fee required by law to entitle it to transact business in this State, and has otherwise complied with the laws heretofore existing relative thereto, shall not on application for certificate of authority to transact business in this State, be required to pay such fee again, nor to file a copy of the charter with the secretary of the Commonwealth, if a copy thereof is already on file in his office. Such corporation shall pay the clerical fees for such certificate of authority and for filing such papers as prescribed by law."

Penalties for the enforcement of the above provision to compel

foreign corporations to enter the State and take a license or authority to do business within the State by a provision reading as follows:

84 "SEC. 1105. License, penalty for doing business without, agents personally liable.

"If any foreign corporation shall transact business in this State without first obtaining such certificate of authority provided for in the preceding section, it shall be fined not less than ten dollars nor more than one thousand dollars, such fine to be imposed by the State Corporation Commission, whose duty it shall be to see that the provisions of the preceding section are complied with. Every transaction had in the State by such a corporation without such certificate of authority shall be deemed a separate offense. The officers, agents and employees of any such corporation doing business in this State without such certificate of authority shall be personally liable to the State for any fines imposed on it, and to any resident of the State having a claim against such corporation, and service of legal process upon any of said officers, agents, or employees shall be deemed sufficient service on the corporation."

That the legislature of Virginia had the power to pass an act requiring foreign corporations engaged in business in that state to take out a license and pay a license fee therefor is too well settled to require a discussion of that question, but we do not understand that complainant challenges the right of the legislature to enact a law of this character. The only reference contained in the bill which intimates that this act is unconstitutional is as follows:

"And especially by the third clause of Section 8 of Article 1 of the Constitution of the United States, which provides that Congress shall have the power, 'To regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes'; that to enforce the above provisions of the Virginia Statute against your orator will be, and is in violation of the above provisions of the Constitution of the United States; and that the above provision of the statute of the State of Virginia, when construed or employed, or attempted to be construed or employed so as to prevent, interrupt, trouble, molest, or in any way interfere with your orator in carrying on its business as aforesaid is void and of no force or effect whatsoever, being contrary to the provisions of the Constitution of the United States."

It will be observed that it is not the contention of complainant that the statute in question is unconstitutional but it is insisted that the statute may be enforced in such a manner as to deny complainant a right guaranteed by the Interstate Commerce clause of the Constitution of the United States. Therefore it will be seen

85 that the principal point relied upon as ground for relief is that the corporation commission may so construe the acts and conduct of complainant as to bring it within the purview of the statute.

It is urged that inasmuch as complainant is a foreign corporation engaged in selling and disposing of interstate shipments it is not subject to hindrance or interference by taxation or otherwise by the

laws of Virginia, and that the action of the Chairman of the State Corporation Commission in threatening to institute suit for the purpose of testing the question as to complainant's liability is in the nature of a hindrance or interference with complainant in the transaction of its business and that therefore it is the duty of this Court in advance of a trial by the State tribunal upon the facts alleged, to assume that the State Corporation Commission will so construe the Virginia Statute as to disregard the provisions of the Interstate Commerce Clause of the Constitution of the United States. There is nothing on the face of this statute to indicate that it is unconstitutional, nor do we believe that there is anything contained therein that is in conflict with the Interstate Commerce Clause of the Constitution of the United States, and certainly there does not appear therein anything to show an intent to prevent by excessive penalties a foreign corporation from contesting its liability thereunder. Injunctions are granted upon the theory that complainant is about to suffer irreparable injury and that he is without a complete and adequate remedy at law. In this instance ample means are afforded by the State statute by which the question as to the liability of the complainant may be determined by a competent tribunal.

If proceedings should be instituted by the Corporation Commission, it would be for that body to determine upon the facts as to whether the complainant as a foreign corporation has been
86 doing business in the state. If it then appears that the complainant has not made any sales of machines except those of an interstate character, it could not be held liable. There is a provision in the statute which authorizes an appeal from any of the judgments or decrees of the Corporation Commission, and if, after a hearing, that body should be of opinion that the complainant was liable for the penalties imposed by the statute it would have the right to take an appeal to the Supreme Court of Appeals of the State and if that Court should affirm the judgments of the Commission, complainant, upon a proper showing, would be still afforded an opportunity to carry the case to the Supreme Court of the United States.

The liability of the complainant in the event proceedings should be instituted against it would necessarily depend upon the facts as established by the evidence offered before the Corporation Commission. Thus it will be seen that ample provision has been made by which the very question sought to be determined here may be judicially determined, first, by the Corporation Commission, and if, as we have stated, complainant should feel aggrieved by the judgment of that Court, then by the Supreme Court of Appeals of the State of Virginia, and finally, if there should be a constitutional question involved, by the Supreme Court of the United States.

This Court cannot in advance of the proposed action on the part of the Corporation Commission see its way clear to determine that that body will not give complainant a fair and impartial hearing, and as we view the matter, that is the principal question we are asked by the complainant to pass upon.

We do not wish to be understood as expressing any opinion as to the liability of the complainant under the Virginia Statute. All

we decide is that in view of the allegations of the bill, as well as the evidence which has been offered, we do not think that
87 complainant according to its own showing is entitled at this stage of the proceeding to injunctive relief, and its prayer therefore is accordingly denied.

88 *Order Denying Interlocutory Injunction.*

Entered and Filed May 7th, 1913.

District Court of the United States for the Eastern District of Virginia.

In Equity. No. 88.

THE DALTON ADDING MACHINE COMPANY, Complainant,
vs.
THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of said Commission, Defendants.

This cause, on the 8th day of February, 1913, came on to be further heard at this term, before the Honorable J. C. Pritchard, Circuit Judge, Edmund Waddill, Jr., and John C. Rose, District Judges, sitting as a Court, in pursuance of orders heretofore entered in this cause, and was argued by Thomas A. Banning, Esq., on behalf of the Complainant, and Samuel W. Williams, Esq., Attorney General, and Richard B. Davis, Esq., Assistant Attorney General, of the Commonwealth of Virginia, on behalf of the Defendants, and was taken under advisement by the Court, and afterwards, to-wit, and on the 31st day of March, 1913, the Court filed its written opinion in said cause, which is filed and made a part of the record herein, and this day, upon consideration thereof, it is ordered, adjudged, and Decreed, as follows, namely:

89 The motion or application of the Complainant that the Court issue an interlocutory, provisional or preliminary injunction against the Defendants, The State Corporation Commission of the State of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of the said Commission, restraining and enjoining them from imposing or attempting to impose the fines or penalties provided in the Statute of Virginia, referred to and set out in the Bill of Complaint herein, and from directly or indirectly preventing, interrupting, troubling, molesting or interfering with the business of the said Complainant, carried on as set out in the said Bill of Complai*nant*, under color or by authority of the provisions of the Statute of the State of Virginia, referred to in said Bill of Complaint, or otherwise, is hereby denied, the Court being of opinion, for the reasons stated in writing and filed with the record herein, that the Complainant is not entitled at this stage of the proceeding to the injunctive relief prayed for in said Bill of Complaint, and that, under the Statutes of the State of Vir-

ginia, referred to in the said Bill of Complaint, and the other Statutes of the State bearing upon the subject, ample means are afforded by the State Statute by which the question as to the liability of the Complainant may be determined by a competent tribunal.

Richmond, Va., May 7th, 1913.

J. C. PRITCHARD,
U. S. Circuit Judge.
EDMUND WADDILL, JR.,
Dist. Judge.
JOHN C. ROSE,
U. S. District Judge.

90 *Petition for Appeal.*

Filed May 7th, 1913.

District Court of the United States for the Eastern District of Virginia.

In Equity. No. 88.

THE DALTON ADDING MACHINE COMPANY, Complainant,
vs.
THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of said Commission, Defendants.

Petition for Appeal.

Now, to-wit, this 7th day of May, 1913, comes the Dalton Adding Machine Company, the Complainant, and, considering itself aggrieved by the order of the District Court of the United States for the Eastern District of Virginia, denying its motion or application for an interlocutory, provisional or preliminary injunction against the Defendants in the above entitled cause, entered, to-wit, on the 7th day of May, 1913;

Does hereby appeal from said order to the Supreme Court of the United States, and prays that this appeal may be allowed and a citation issued directed to the above named Defendants, commanding them to appear before the Supreme Court of the United States, to do and receive what may appertain to justice and equity to be done in the premises; that a transcript of the record and proceedings and
91 evidence in said cause, duly authenticated, may be sent to the United States Supreme Court, and that the decree of said District Court may be reversed by said Supreme Court, and such decree made as to the said Supreme Court shall seem meet, equitable and just.

THOMAS A. BANNING,
Solicitor for Complainant.

Appeal allowed this 7th day of May, 1913.

EDMUND WADDILL, JR.,
District Judge.

92 *Assignment of Errors.*

Filed May 7th, 1913.

District Court of the United States for the Eastern District of Virginia.

In Equity. No. 88.

THE DALTON ADDING MACHINE COMPANY, Complainant,
vs.
THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of said Commission, Defendants.

Assignment of Errors.

Now, on this 7th day of May, 1913, comes The Dalton Adding Machine Company, the Complainant in the above entitled cause, by its Solicitor, Thomas A. Banning, and files with its Petition for Appeal, the following Assignment of Errors:

1. That the District Court erred in denying and in not granting the Complainant's motion or application for an interlocutory, provisional or preliminary injunction against the Defendants, as prayed for in the Bill of Complaint herein.

2. That the Court erred in holding that ample means are afforded by the State Statute by which the question as to the liability of the Complainant may be determined by a competent tribunal, in not determining its non-liability upon the facts presented to it in and by the record.

93 3. That the Court erred in holding that ample provision has been made by which the very question sought to be determined here may be judicially determined, first, by the Corporation Commission, and if the Complainant should feel aggrieved by the judgment of that Court, then by the Supreme Court of Appeals of the State of Virginia; and, finally, by the Supreme Court of the United States; and in not considering and determining such question itself upon the facts presented to it and shown by the record.

4. That the Court erred in holding that the Complainant was not entitled at this stage of the proceeding to injunctive relief.

5. That the Court erred in holding that the action of the Chairman of the State Corporation Commission, in threatening to institute suit or to take proceedings against the Complainant to enforce the fines and penalties provided in and fixed by the State Statute, under the facts shown in the record, did not entitle the Complainant to the injunctive relief prayed for.

6. That the Court erred in not finding that the Complainant was engaged purely in interstate business or commerce, and therefore entitled to protection, under the Commerce Clause of the Consti-

tution of the United States, by injunctive relief, against being in any way prevented, interrupted, troubled, molested or interfered with in carrying on its business, as the statements in the Bill and the facts appearing in the record showed that it has been and was carrying on the same.

94 7. That the Court erred in not finding from the statements of the Bill and the facts appearing in the record, that the Complainant, in carrying on its business as it had been and appears to be, was exempt from the fines and penalties imposed by the Statutes of Virginia, and therefore entitled to be protected against any threatened or attempted imposition of such fines or penalties.

THOMAS A. BANNING,
Solicitor for Complainant.

95 *Order Allowing Appeal and Fixing Amount of Appeal Bond.*

Entered and Filed May 7th, 1913.

District Court of the United States for the Eastern District of Virginia.

In Equity. No. 88.

THE DALTON ADDING MACHINE COMPANY, Complainant,
vs.
THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH OF Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of said Commission, Defendants.

Order.

Now come the parties by their Solicitors, and the Complainant in open Court presents its Petition for Appeal and Assignment of Errors, and moves the Court for the allowance of an appeal to the Supreme Court of the United States from the order of the Court denying its motion or application for an interlocutory, provisional or preliminary injunction against the Defendants entered herein.

It is thereupon ordered by the court that said appeal be and the same is hereby allowed, upon the Complainant filing a bond in the sum of five hundred dollars ($500.00), with security to be approved by the Court.

Richmond, Va., May 7th, 1913.

EDMUND WADDILL, JR.,
District Judge.

96 *Appeal Bond.*

Know all men by these presents, That we, the Dalton Adding Machine Company, a corporation, of Poplar Bluff, Missouri, as principal and the United States Fidelity & Guaranty Company, of Baltimore, as surety, are held and firmly bound unto The State

Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of said Commission, in the full and just sum of Five Hundred Dollars ($500.00), to be paid to the said The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of said Commission, certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, successors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 7th day of May, in the year of our Lord one thousand nine hundred and thirteen.

Whereas, lately at a term of the United States District Court for the Eastern District of Virginia, in a suit depending in said Court, between the Dalton Adding Machine Company, Complainant, versus The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of said Commission, Defendants, a decree was rendered against the said Dalton Adding Machine Company, denying its application or motion for a preliminary or interlocutory injunction, and the said Dalton Adding Machine Company having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of said Commis-
97 sion, citing and admonishing them to be and appear at the United States Supreme Court to be holden at Washington on the day in the said citation mentioned:

Now, the condition of the above obligation is such, that if the said Dalton Adding Machine Company shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

DALTON ADDING MACHINE CO.,
By JAMES L. DALTON, *Pres.*;
BIRNEY DYSART, *Secretary.*

[Seal of Dalton Adding Machine Company.]

THE UNITED STATES FIDELITY & GUARANTY COMPANY,
By E. LESLIE SPENCE, JR.,
Ag't & Attorney-in-Fact.

[Seal of U. S. Fidelity & Guaranty Company.]

Approved by—
EDMUND WADDILL, JR.,
Dist. Judge.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of said Commission, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal, duly allowed by the United States District Court for the Eastern District of Virginia, and filed in the Clerk's Office of said Court on
98 the 7th day of May, A. D. 1913; in a cause wherein The Dalton Adding Machine Company is Appellant, and you are Appellees, to show cause, if any, why the decree rendered against the said Appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, this 20th day of May, in the year of our Lord one thousand nine hundred and thirteen.

EDMUND WADDILL, JR.,
United States District Judge for the Eastern District of Virginia.

Acceptance of Service.

Legal service of the above citation is hereby accepted on behalf of the State Corporation Commission of Virginia, and the members thereof.

SAMUEL W. WILLIAMS,
Attorney General of Virginia.

May 31, 1913.

Præcipe as to Matter to Be Included in the Transcript of Record on Appeal.

Filed May 19th, 1913.

District Court of the United States for the Eastern District of Virginia.

In Equity. No. 88.

THE DALTON ADDING MACHINE COMPANY, Complainant,

vs.

THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH OF Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of said Commission, Defendants.

99 The Clerk of the District Court, in making up the Transcript for the Supreme Court, will please include therein the following papers and matters:

1. The Bill of Complaint and amendment thereto.
2. The special appearance filed on behalf of the Defendants.
3. The demurrer filed on behalf of the Defendants.
4. The plea filed on behalf of the Defendants.
5. The motion filed by the Complainant to strike the demurrer from the files.
6. The answer of the Defendants to the motion or application for an injunction.
7. The motion of the Defendants to dismiss, if any such motion was filed.
8. The affidavits of H. C. Grubbs, Jennie E. Grubbs, and James L. Dalton, filed on behalf of the Complainant.
9. The affidavits of Robert R. Prentis and Richard T. Wilson, filed on behalf of the Defendants.
10. The rebuttal affidavits of James L. Dalton and H. C. Grubbs, filed on behalf of the Complainant.
11. The opinion of the Court.
12. The order denying the injunction.
13. The prayer for appeal and assignment of errors.
14. The order allowing the appeal and fixing the amount of the bond.
15. The bond.
16. All orders or other entries of record in the cause.
17. Any papers filed by either of the parties, not enumerated above, that may constitute a part of the record.

THOMAS A. BANNING,
Solicitor for Complainant.

STATE OF ILLINOIS,
County of Cook, ss:

John A. Bode, being first duly sworn on oath deposes and says: That he served a copy of the above Præcipe on the Defendants, by enclosing the same in an envelope addressed to the Hon.
100 Samuel W. Williams, Attorney-General of Virginia, Richmond, Virginia, and duly sealing, stamping, registering, and mailing the same in the Post Office at Chicago, Illinois, this 17th day of May, 1913.

JOHN A. BODE.

Subscribed and sworn to before me this 17th day of May, 1913.
[NOTARIAL SEAL.] FRANCES M. FROST,
Notary Public.

Clerk's Certificate.

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, Joseph P. Brady, Clerk of the District Court of the United States for the Eastern District of Virginia, do hereby certify that

the foregoing is a true and complete transcript of the record, together with all things thereunto relating, made in accordance with the Præcipe of the Solicitor for the Complainant filed herein and made a part hereof, in the case of The Dalton Adding Machine Company, Complainant, versus The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William F. Rhea, and J. Richard Wingfield, Members of said Commission, Defendants.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, at the City of Richmond, Virginia, this 4th day of June, A. D., 1913.

[Seal United States District Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the District Court of the United States for the Eastern District of Virginia.

101 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William H. Rhea, and J. Richard Wingfield, Members of said Commission, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal, duly allowed by the United States District Court for the Eastern District of Virginia, and filed in the Clerk's Office of said Court on the 7th day of May, A. D. 1913; in a cause wherein The Dalton Adding Machine Company is Appellant, and you are Appellees, to show cause, if any, why the decree rendered against the said Appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edmund Waddill, Jr., United States District Judge for the Eastern District of Virginia, this 20th day of May, in the year of our Lord one thousand nine hundred and thirteen.

EDMUND WADDILL, JR.,
United States District Judge for the Eastern District of Virginia.

Legal service of the above citation is hereby accepted on behalf of the State Corporation Commission of Virginia, and the members thereof.

May 31, 1913.

SAMUEL W. WILLIAMS,
Attorney General of Virginia.

102 [Endorsed:] No. —. In the Supreme Court of the United States. The Dalton Adding Machine Company, Appellant, versus The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William H. Rhea, and J. Richard Wingfield, Members of said Commission, Appellees. Citation. Filed May 28th, 1913. Joseph P. Brady, Clerk.

Endorsed on cover: File No. 23,740. E. Virginia D. C. U. S. Term No. 591. The Dalton Adding Machine Company, appellant, vs. The State Corporation Commission of the Commonwealth of Virginia, Robert R. Prentis, William H. Rhea, and J. Richard Wingfield, members of said commission. Filed June 9th, 1913. File No. 23,740.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1914.

No. 190.

THE DALTON ADDING MACHINE COMPANY,
Appellant,
vs.
THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH OF VIRGINIA, ROBERT R. PRENTICE, WILLIAM F. RHEA, AND J. RICHARD WINGFIELD, MEMBERS OF SAID COMMISSION,
Appellees.

Appeal from the District Court of the United States for the Eastern District of Virginia.

BRIEF AND ARGUMENT FOR APPELLANT.

Statement of Facts.

May it please the Court:

This is a bill in equity, filed October 10, 1912, page 1, in the District Court of the United States for the Eastern District of Virginia, for an injunction to restrain the defendants from interfering with the business of the plaintiff, in shipping into and selling Adding Machines in the State of Virginia, by instituiting proceedings against it under its foreign corporation laws, on the ground that the business of the plaintiff was an interstate business, and, therefore, protected by the Third Clause of Section 8 of Article 1 of the Constitu-

tion of the United States, which provides that Congress shall have power "To regulate commerce with foreign Nations and among the several States and with the Indian Tribes"; that to enforce the provisions of Sections 1104 and 1105, quoted at page 12, of the Virginia Statutes against the plaintiff would be in violation of the above provision of the Constitution of the United States; and that the provisions of the Statutes of Virginia, when construed or employed, or attempted to be construed or employed, so as to prevent, interrupt, trouble, molest, or in any way interfere with the plaintiff in carrying on its business as it was carrying on the same, would be to render the provisions of the Statutes void and of no force and effect as being contrary to the above provision of the Constitution of the United States.

Afterwards, and on November 4, 1912, the appearance day, the Attorney General of Virginia entered a special appearance, page 21, "For the purpose of objecting to the jurisdiction of this Court to entertain the said cause, or to make any order therein against the said defendants, or any of them, and for that purpose alone."

On the same day—November 4, 1912—the Attorney General filed a demurrer, page 21, and a plea, page 23, both entitled on behalf of the individual defendants, evidently intended to raise the question of the jurisdiction of the court in accordance with the special character of the appearance entered, although the demurrer and the plea were both directed also to the equities or merits of the bill, and so, as we shall presently insist, operated to make the appearance a general one.

An order was entered, page 26, for a hearing on the demurrer and plea, and the same was set down for hearing

before the two Circuit Judges of the Fourth Judicial Circuit, Hon. Nathan Goff and Hon. J. C. Pritchard, and District Judge Edmund Waddill, for December 17, 1912.

Afterwards, on motion of the plaintiff, this order was set aside and vacated, and an order, page 27, for hearing an application for a preliminary or interlocutory injunction was entered, setting the application for hearing on December 18, 1912, before the Hon. J. C. Pritchard, Circuit Judge for the Fourth Judicial Circuit, and the Hon. John C. Rose, United States District Judge for the District of Maryland, and the Hon. Edmund Waddill, United States District Judge for the Eastern District of Virginia; and on December 17, 1912, the defendants filed an answer to the application of the plaintiff for a preliminary or provisional injunction, page 28, which answer was not an answer to the *bill*, but was an answer to the plaintiff's *motion* for an injunction, in which answer the defendants set up, as reasons why the injunction should not be granted, the grounds set up in their demurrer, with the additional grounds that, as the State Corporation of Virginia was a Court of Record, threats by it could not be enjoined, and that a Court of Equity had no jurisdiction to enjoin a court of competent jurisidiction from instituting criminal prosecutions for violation of State Statutes.

Afterwards, an order was entered, page 30, postponing the hearing of the plaintiff's motion for an injunction until February 8, 1913, and giving leave to the parties to file affidavits in support of and against the motion. In accordance with such leave, affidavits were filed on behalf of the plaintiff, pages 32-47, and on behalf of the defendants, pages 48-58, and on behalf of the plaintiff in reply, pages 59-70.

Afterwards, and on February 8, 1913, page 24, the defendants filed a motion to dismiss the bill of complaint, and the

case, so formed, as to pleadings and proofs, was brought on for hearing on the plaintiff's motion for a preliminary injunction before the court constituted as last above explained.

Afterwards, and on March 31, 1913, page 76, the court filed its opinion, holding that the plaintiff was not entitled to the injunction asked.

Afterwards, and on May 7, 1913, page 81, an order was entered denying the preliminary or interlocutory injunction; and on the same day, pages 82-85, a petition for appeal, assignment of errors and bond were filed, and an appeal allowed to this court.

Assignment of Errors.

The assignments of error, page 83, are to the effect that the Court erred in denying and not granting the plaintiff's motion for an injunction; that the Court erred in holding that ample means were afforded by the State Statute by which the question as to the liability of the plaintiff might be determined by a competent tribunal, and in not determining its non-liability upon the facts presented in the record; that the Court erred in holding that ample provision had been made by which the very question sought to be determined might be judicially determined, first by the Corporation Commission, and afterwards, if the complainant should feel aggrieved by the judgment of the Commission, by the Supreme Court of Appeals for the State of Virginia; and finally by the Supreme Court of the United States; and in not considering and determining such question itself upon the facts presented and shown by the record; that the Court erred in holding that the plaintiff was not entitled at that stage of the proceedings to injunctive relief; that the Court erred in holding

that the action of the Chairman of the State Corporation Commission, in threatening to institute suit, or to take proceedings against the plaintiff to enforce the fines and penalties provided in and fixed by the State Statute under the facts shown in the record, did not entitle the plaintiff to the injunctive relief prayed for; that the Court erred in not finding that the plaintiff was engaged purely in interstate business or commerce, and, therefore, entitled to protection under the Commerce Clause of the Constitution of the United States, by injunctive relief, from being in any way prevented, interrupted, troubled, molested or interfered with in carrying on its business, as the statements in the bill and the facts appearing in the record showed that it had been and was carrying on the same; and that the Court erred in not finding from the statements of the bill and the facts appearing in the record that the plaintiff, in carrying on its business as it had been and was carrying it on, was exempt from the fines and penalties imposed by the Statute of Virginia, and, therefore, entitled to be protected against any threatened or attempted imposition of such fines or penalties.

Argument.

As already said, no answer to the *bill* was filed on the part of the defendants, but a special appearance, and a demurrer to the equities, and a plea to the jurisdiction, were filed, and also an answer to the *motion* or application for a preliminary or interlocutory injunction, in which the equities of the case and the jurisdiction of the Court were raised, the same as in the demurrer and plea, without, however, denying the allegations of fact alleged in the bill, which set up that the plaintiff's business was purely an interstate business protected by the Commerce Clause of the Constitution. The facts as alleged in the bill stood, therefore, as admitted for the purposes of the motion.

Notwithstanding the fact that the allegations of the bill as to the interstate character of the plaintiff's business were not denied, but on the contrary stood as admitted, the District Court declined to interfere, by way of injunction, to protect such business, and denied the appellant's right to a preliminary or interlocutory injunction, on the ground, as stated in the opinion, that the Court could not in advance of the proposed action on the part of the Corporation Commission, see its way clear to determine that that body would not give plaintiff a fair and impartial hearing.

In a word, the effect of the court's decision was to deny injunctive relief in the Federal Court *prior* to the proceedings in the State Corporation Commission, irrespective of the character of the business the plaintiff was carrying on, even though it were admitted by the defendants that the business, which they were threatening to interfere with, was purely and solely an interstate business protected by the Commerce Clause of the Constitution.

We know of no decision of this Court or of the Circuit or District Courts, aside from the decision in this case, which holds that a foreign corporation, engaged in interstate commerce business, protected by the Commerce Clause of the Constitution, is disentitled to protection from interference with such commerce prior to the infliction of the injury and damage which is threatened and which it seeks to avert, and that it must wait until the injury has been inflicted and redress denied in the State Courts before it can maintain a suit for injunction, no matter how plainly the facts, before the Federal Court, show that it is engaged in a purely interstate commerce business, and that the State Officials are threatening to interfere with the free exercise and enjoyment of such business. Yet that is what the court in this case apparently holds. On the contrary, there are

many decisions in this Court, and in the Circuit and District Courts, where relief has been granted to protect interstate business from the threatened interference of State Officials, without waiting to litigate the matter through the State Courts, to see whether or not relief can be obtained there. The decision of the District Court appears to be out of harmony with all these decisions.

The Court, page 77, in stating the grounds of the application for the injunction, the italics being ours, says:

> "It is not alleged that the Corporation Commission of Virginia *has* required plaintiff to pay in the license tax or that any fines *have* been imposed upon it for violation of the Statute, nor does it appear that any summons *has* been issued against plaintiff to show cause why it should not be proceeded against for violation of the Statute.
>
> "The principal ground relied upon for relief is based upon the allegation that the State Corporation Commission has *threatened* to begin a suit or take proceedings against complainant to enforce the provisions of the Statute to which reference is made. In other words, that the Chairman of the Commission has intimated that plaintiff's method of transacting business brings it within the purview of the Statute, and that under the law it is required to take out a license and pay a license fee."

Again, at the bottom of page 79, after quoting the Statutes of Virginia, the Court, the italics being ours, says:

> "It is urged that inasmuch as complainant is a foreign corporation engaged in selling and disposing of interstate shipments, it is not subject to hindrance or interference by taxation or otherwise by the laws of Virginia, and that the action of the Chairman of the State Corporation Commission in *threatening* to institute suit for the purpose of testing the question as to complainant's liability is in the nature of a hindrance or interference with complainant in the transaction of its business, and that therefore it is the duty

of this Court, *in advance of a trial* by the State tribunal upon the facts alleged, to assume that the State Corporation Commission will so construe the Virginia Statute as to disregard the provisions of the Inter-State Commerce Clause of the Constitution of the United States. There is nothing on the face of this Statute to indicate that it is unconstitutional, nor do we believe that there is anything contained therein that is in conflict with the Interstate Commerce Clause of the Constitution of the United States, and certainly there does not appear therein anything to show an intent to prevent, by excessive penalties, a foreign corporation from contesting its liability thereunder. Injunctions are granted upon the theory that complainant is about to suffer irreparable injury and that he is without a complete and adequate remedy at law. In this instance ample means are afforded by the State Statute by which the question as to the liability of the complainant may be determined by a competent tribunal."

The Court then proceeds to say that *if* proceedings should be instituted by the Corporation Commission, it would be for that body to determine upon the facts as to whether the complainant, as a foreign corporation, has been doing business in the State, and that *if* it should then appear that the complainant had not made any sales of machines, except those of an interstate character, it could not be held liable. The Court then says that the Statute contains provisions which authorize an appeal from the judgments or decrees of the Corporation Commission, and that *if*, upon a hearing, that body should be of opinion that complainant was liable for the penalties, it would have a right to appeal to the Supreme Court of Appeals of the State, and that *if* that Court should affirm the judgment of the Commission, the plaintiff could then carry the case to this Court. The Court says that the liability of the plaintiff, in the event that proceedings should be instituted against it, would necessarily depend upon the facts as established by the evidence offered before the Corporation Commission. The

Court then, at the bottom of page 80, the italics being ours, says:

> "This Court cannot *in advance of the proposed action* on the part of the Corporation Commission see its way clear to determine that that body will not give complainant a fair and impartial hearing, and as we view the matter, that is the principal question we are asked by the complainant to pass upon.
>
> "We do not wish to be understood as expressing any opinion as to the liability of the complainant under the Virginia Statute. All we decide is that in view of the allegations of the bill, as well as the evidence which has been offered, we do not think that complainant according to its own showing is entitled *at this stage of the proceeding* to injunctive relief, and its prayer therefore is accordingly denied."

It will be apparent, we think, from the foregoing, as well as from a reading of the entire opinion, that the Court predicated its denial of injunctive relief wholly upon the ground that such relief could not be accorded "in advance of the proposed action" of the Corporation Commission, and that the plaintiff was not entitled "at this stage of the proceeding" to injunctive relief. In short, the Court in this case has, in effect, not to say in fact, held that, no matter what the *facts* of the case are, a bill cannot be maintained for an injunction against *threatened* interference with the business of a foreign corporation, even though such business, on the facts before the Court, shows that it is purely an Interstate Commerce business, and, therefore, free from interference, interruption, or molestation, on the part of the State, of any and every kind whatsoever.

Although the Court declined to pass upon the equities presented by the bill, which were supported by the affidavits, it stated in its opinion, page 76, the effect of the allegations contained in the bill, as follows:

"The bill alleges that complainant is a corporation

organized and existing under and by virtue of the laws of the State of Missouri; that it is a citizen and resident of that State, with its principal office in Poplar Bluff; that it has been engaged in the business of manufacturing and selling what is known as adding, listing and calculating machines; that it has spent more than One Million Dollars in experimental work, the building of a factory, the construction, purchase and installation of special tools, machinery, etc., and has at all times been engaged in interstate commerce; that it has not in any manner conducted or carried on its business outside of the State of Missouri; that it has sold its machines through salesmen or solicitors, who are merely 'Drummers' authorized to solicit orders for, or proposals to purchase its machines; has appointed a salesman or solicitor in the State of Virginia for the purposes aforesaid; that only sales have been made by virtue of his personal solicitation or those employed to assist him in securing orders; that the said salesman is located at Richmond, Virginia; that he is not a clerk or employee of the complainant and is not paid a fixed compensation or salary; rents his own office, bears his own expense; pays salary or commission to those employed to assist him; his only compensation being on sales effected and collections made; that neither he nor those working under him have power to actually sell a machine or convey title thereto, and that he has not sold or conveyed title to any machine, and that his power and the power of those whom he employs is expressly limited to merely soliciting orders or proposals to purchase machines, which orders are taken on printed blanks or forms furnished him by complainant, which forms contain, and have always contained, the words, 'This order subject to approval of the Company,' which orders amount only to an offer or proposition to purchase a machine, on the part of the person, firm, company, or corporation desiring to buy; that after such offers or proposals are signed by the party desiring to purchase a machine, they are sent by the solicitor or salesman to the Home Office of your Orator at Poplar Bluff, Missouri, for approval and acceptance; that your orator thereupon considers the offers or proposals to purchase, and has accepted some and has rejected some sent to your orator by its salesman or solicitor from

Virginia and other States, as your orator has found the terms of payment, the responsibility of the purchaser, and similar matters satisfactory or otherwise; that all checks and moneys are likewise forwarded to the Home Office of your orator at Poplar Bluff, Missouri, and the commissions due the salesman or solicitor in Virginia, as well as in other States, are paid by your orator from time to time from its Home Office in Missouri, as collections are received; that in no case is any title vested in the prospective purchaser in or to the machine which he is proposing to buy, but the same remains the property of your orator until your orator has accepted the offer or proposal and received the money in full therefor."

In addition to the above statement by the Court, of the method in which the plaintiff has carried on its business, as shown by the bill of complaint, there is set out, at page 5, the forms of written blanks which prospective purchasers are required to sign and have always signed where they desire to purchase a machine, and also the form of contract which they have always signed where they desire to rent a machine of the plaintiff, which show that they are in each case signed subject to the approval of the Company, which is shown, on the face of the contract in each instance, to be located at Poplar Bluff, Missouri. The bill then, page 7, explains how the orders are transferred to the company and filled. It says:

"That all orders or proposals signed by parties desiring to purchase or rent machines in Virginia, and sent to your orator for approval and acceptance, as above explained, are and have been on the forms or blanks above quoted; that such orders or proposals are all transmitted to your orator through the Post Office by mail, and when signed by your orator at Poplar Bluff, Missouri, and not before, became effective and completed contracts, and contain the entire contract or agreement covering the transaction between your orator and the purchaser; that all the machines which have been sent to the State of Virginia for the purpose of being sold, or

after an order for the same has been procured, as above, or as hereinafter explained, have been sent by expressing or transmitting the same through an express company constituting a common carrier; and that when a party who has tried or tested a machine already shipped by express into the State of Virginia to be sold, as above and as hereinafter explained, desires to purchase the particular machine which he has tried and has in his possession for the purpose of trial, the said machine is designated, in the order or proposal which he signs, by specific description, referring to it by its distinguishing style and serial number, so that his order or proposal, sent through the mails to your orator at Poplar Bluff, Missouri, for consideration and acceptance, as above explained, and the contract, when accepted and signed at Poplar Bluff, Missouri, so as to become a completed and effective contract, segregates such particular machines from all others, and specifies and relates to it alone and to no other machine whatever."

The statement by the court and the quotation from the bill, as above, set out and show, as we think, a purely interstate business, but inasmuch as the defendants may possibly contend that the interstate character of the plaintiff's business may be questioned by other statements and explanations contained in the bill, we think it well at this point to either quote or state the effect of such additional allegations and explanations as the bill may contain that have not been already adverted to.

The third paragraph of the bill, page 8, sets out in detail the manner in which the solicitor procures orders and the manner in which they are filled. And in order that this may be conveniently considered and fully understood, we will quote the same, as follows:

"That your orator's factory is located at Poplar Bluff, Missouri, and all the machines sold to purchasers in Virginia or elsewhere are manufactured there, and none in the State of Virginia; that owing to the nature of the

machine it is necessary for the salesman or solicitor, in effecting sales and in securing offers or proposals for the purchase of a machine, to be able to show the same to prospective purchasers, and in some cases allow them to try the same by installing them in their offices or place of business for a few days or a limited period, to determine their capacities, adaptation to the business carried on by the prospective purchasers, superiority over machines of other makes, and matters of that kind; that to enable its salesman or solicitor to secure orders or proposals for its machines and to effect a sale of the same in the way above explained, it is necessary for your orator to ship machines into the State of Virginia to allow them to be exhibited and in some cases tried or tested by prospective purchasers; that all of the machines that have been shipped by your orator into the State of Virginia, and so exhibited and tried or tested there, were shipped to Virginia for the purpose of effecting a sale of the same, and for no other purpose; that after a prospective purchaser has signed an order or proposal to buy a machine and the same has been sent by the salesman or solicitor to the Home Office of your orator at Poplar Bluff, Missouri, and been accepted by your orator, a machine to fill such order is supplied to the purchaser in one of two ways: First, by shipping a machine direct from the factory in Missouri to fill the order, or, secondly, by allowing the purchaser to retain the machine which he had tested or tried and with which he had become familiar, in which case another machine is shipped from the factory to the salesman or solicitor to take the place of the machine which he had placed on trial and which the purchaser, from having become familiar with the same, preferred and desired to keep; that whether the purchaser is supplied with a machine in the one way or the other, there has been in every case an actual shipment of a machine from Missouri into Virginia, either to supply the purchaser whose order or proposal had been already accepted by your orator, or to be sold by exhibiting the same and allowing a party becoming interested in the same to try or test it before signing an order or proposal, if he so desires, to determine its adaptability and value to him in his particular business; that in the majority of cases the machine is shipped from

Missouri to Virginia to fill orders or proposals already secured before the shipment is made, although in a number of cases, perhaps in three cases out of ten, the purchaser is allowed to retain the machine already shipped into Virginia for the purpose of sale, and which he has tried and tested before signing an order or proposal for the purchase of the same, but that in each and every case there is a shipment of a machine from Missouri into Virginia, the only difference being that in some cases the shipment is made for the purpose of a sale and in anticipation of a sale, while in the remaining cases the shipment is made after the order or proposal to purchase has been secured by the salesman or solicitor and transmitted to the Home Office of your orator in Missouri and accepted by it."

The bill then sets out in paragraphs 4 and 5, pages 10 and 11, that the purpose, end and object of the shipment of a machine from Missouri into Virginia, before an order or proposal has been received for the same, is for the purpose of effecting a sale thereof, and that the shipment, the solicitation of the salesman, the testing or trying of the machine before the signing of an order or proposal to buy the same, are all merely incidents or steps leading up to the final consummation of the sale which, when completed, constitutes, as the bill alleges, a transaction of interstate commerce, of which the initiation of the transaction by shipment and the successive steps of solicitation, testing or trying, and signing a proposal or offer to buy, are all necessary, legitimate and component ingredients or parts of the completed transaction, which includes all the initiatory and intervening acts, instrumentalities and dealings that bring about the consummated sale.

The bill alleges that the transaction is in reality and in fact a transaction between the plaintiff and the purchaser, negotiating and dealing from different states—Missouri and Vir-

ginia—in which the salesman or solicitor merely forms a link, convenience or instrumentality, and that the transaction, as a commercial entity, includes the plaintiff on the one hand, in Missouri, and the purchaser, on the other hand, in Virginia, each dealing from its or his respective place of business, the one in Missouri and the other in Virginia, the same in truth and in reality as if the transaction were conducted by correspondence and without any personal intermediary link or instrumentality represented by the salesman or solicitor, so that the completed transaction constitutes an interstate contract, transaction or dealing, irrespective of whether the machine is shipped from Missouri to Virginia before or after the contract is signed or executed.

The bill further alleges that the adding, listing and calculating machines manufactured by the plaintiff at Poplar Bluff, Missouri are entirely finished and completed in every respect at its factory, and are then enclosed in a box or case to preserve their delicate mechanism from breakage or injury while being transported or shipped; that they are received in the State of Virginia by the salesman or solicitor in the original box or package in which they are shipped, and are delivered to the purchaser when shipped to fill an order or proposal that has been already received and accepted, in the original box or case in which they were shipped, and that in those cases where they have been shipped before the order or proposal has been received and accepted by the plaintiff, they are in some cases sold and delivered to the purchaser, when one is secured, in the original box or case in which they were shipped, and that in other cases, where the prospective purchaser desired to test or try the same, they were removed from the original box or case for the purpose of such test or trial, but for no other purpose.

The bill further alleges that no change, addition, subtraction or modification of any kind is made in the machine after it is shipped to Virginia, but that were the party testing or trying the same desires to make a purchase, and signs an order or proposal which has been forwarded to the office of the plaintiff in Missouri and accepted, the machine is delivered to the purchaser in exactly the same state and condition in every respect that it was in when shipped from the factory in Missouri; and that in reality and in fact, the sale, when effected and consummated by the signing of the order or proposal by the prospective purchaser in Virginia, and the approval or acceptance of the order or proposal by the plaintiff in Missouri, is the same, to all intents and purposes, as the sale of the machine in the original box or case, inasmuch as no addition or change whatsoever to or in it has been made, and that the object of removing it from the box or case was merely for the purpose of exhibiting it and enabling it to be tried or tested by the party interested, to see whether it was adapted for the purposes and requirements of his business.

In view of the allegations of the bill, supported by the affidavits which in no way show any *sales* of machines *in* the State of Virginia, even when they are already there, there are, as it seems to us, only two questions involved that require consideration or discussion. These questions relate to the interstate character of the business carried on by the plaintiff and to its right to protection by injunctive relief against threatened interference with such business, without waiting until the threats have been carried out and the necessary consequent injury to the plaintiff's business thereby inflicted upon it.

First—Is the Business of the Plaintiff an Interstate Business?

If the sale of adding machines by the plaintiff, in the way pointed out and explained above, which is supported by the bill and affidavits, and not denied, is the carrying on of interstate commerce, then there can be no question as to the inability of the State of Virginia to in any way, shape or form interfere with such interstate business, as scores of decisions in this and other Courts will show. As this, however, is practically elementary, we will content ourselves with simply quoting from one of the decisions of this Court, to place its language in convenient shape for consideration and reference.

In *Western Union Telegraph Co.* v. *Kansas*, 216 U. S., 26, this Court, after considering and citing many cases, said, the italics being those of the court:

> "We are aware of no decision by this Court holding that a State may, by any device or in any way, whether by a license tax, in the form of a 'fee,' or otherwise, burden the interstate business of a corporation of another State, although the State may tax the corporation's property regularly or permanently located within its limits, where the ascertainment of the amount assessed is made, 'depended *in fact* on the value of its property *situated within the State.*' *Postal Telegraph Co.* v. *Adams*, 155 U. S., 688, 696; *Leloup* v. *Mobile*, 127 U. S., 640, 649. On the contrary, it is to be deduced from the adjudged cases that a corporation of one State, authorized by its charter to engage in lawful commerce among the States, may not be prevented by another State from coming into its limits for all the legitimate purposes of such commerce. It may go into the State without obtaining a license from it for the purposes of its interstate business, and without liability to taxation there, *on account of such business.*"

As we understand, Commerce includes everything which contributes to the transference of ownership in personal property—such as negotiations, contracts and sales—from one to another, and everything which tends to bring about or facili-

tate such transference is a part or ingredient of commerce, and Interstate commerce includes the transference of the ownership of personal property between citizens of different states, or which involves transactions—such as transportations, negotiations, contracts and sales—between citizens of different States, however conducted and brought about. The ingredients, instrumentalities and means of every kind and nature whatsoever, which contribute to commerce or to interstate commerce, whether they consist in the shipment, negotiations, contract, sale, delivery, or what not, enjoy the same rights and immunities that commerce, considered as an entity, itself enjoys, as being simply means to an end.

Both the terms "commerce" and "interstate commerce" have been the subject of frequent consideration and definition by this Court, but for the convenience of the Court we will quote from a few decisions to see the exact language in which the definitions have been cast.

In *Welton* v. *State of Missouri*, 91 U. S., 280, this Court said:

> "Commerce is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, purchase, sale, and exchange of commodities between the citizens of other countries, and between the citizens of different States. The power to regulate it embraces all the instruments by which commerce may be conducted."

In *Kidd* v. *Pearson*, 128 U. S., 20, this Court said:

> "No distinction is more popular to the common mind or more clearly expressed in economic and political literature than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitu-

tional sense embraces the regulation at least of such transportation. The legal definition of the term, as given by this Court in *County of Mobile* v. *Kimball*, 102 U. S., 691, 702, is as follows: 'Commerce with foreign countries, and among the States, strictly considered, consists of intercourse and traffic, including in these terms, navigation, and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities.' "

In *Veazie* v. *Moore*, 14 How., 573, this Court, the italics being ours, said:

> "Commerce with foreign nations, must signify commerce which in some sense is necessarily connected with these nations, transactions which either immediately, or *at some stage of their progress*, must be extra-territorial."

In *Groves* v. *Slaughter*, 15 Pet., 511, this Court, after referring to *Brown* v. *Maryland*, 12 Wheat., said:

> "Commerce among the States, as defined by this Court, is 'trade,' 'traffic,' 'intercourse' and dealing in articles of commerce between States, by its citizens or others, and carried on in more than one State."

In *Gloucester Ferry Company* v. *Pennsylvania*, 114 U. S., 203, this Court said:

> "Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, and the navigation of public waters for that purpose, as well as the purchase, sale and exchange of commodities. The power to regulate that commerce, as well as commerce with foreign nations, vested in Congress, is the power to prescribe the rules by which it shall be governed, that is, the conditions upon which it shall be conducted; to determine when it shall be free and when subject to duties or other exactions. The power also embraces within its control all the instrumentalities by which that commerce may be carried on, and the means by which it may be aided and encouraged. The subjects, therefore, upon which the power may be exerted are of infinite variety."

In *Hopkins* v. *United States,* 171 U. S., 597, this Court said:

> "Definitions as to what constitutes interstate commerce are not easily given so that they shall clearly define the full meaning of the term. We know from the cases decided in this Court that it is a term of very large significance. It comprehends, as it is said, intercourse for the purposes of trade in any and all its forms, including transportation, purchase, sale and exchange of commodities between citizens of different states, and the power to regulate it embraces all the instruments by which such commerce may be conducted."

Although the above decisions, and others of a similar purport could be cited which are familiar to this Court, show that interstate commerce includes "the transportation, purchase, *sale,* and exchange of commodities" between citizens of different States, including "the instruments by which such commerce may be conducted," and includes "the *buying* and *selling* and the transportation incidental thereto," and all transactions which "either immediately or at *some stage* in their progress" are "extra-territorial" and all "dealing in articles of commerce between States, by its citizens or others, and carried on in more than one State," and all intercourse for the purposes of trade in any and all its forms, "including transportation, purchase, *sale* and exchange of commodities between the citizens of different states," yet we beg to quote from the decisions of a few of the State and Circuit Courts of the United States, to show the terms in which they have defined and expressed the scope and matters coming within interstate commerce.

In *Loverin & Browne Co.* v. *Travis,* 135 Wis., 331, quoted in *United States* v. *Tucker,* 188 Fed., 743, the Supreme Court of Wisconsin, among other things, the italics being ours, said:

> "It cannot now be doubted that 'commerce' in the Federal Constitution, comprehends all of the *intercourse* between the parties necessarily or ordinarily involved in

a commercial transaction with reference to merchantable commodities. Nor can it be doubted that the solicitation of the purchaser by the seller, the *contract* of purchase and sale, and the actual physical delivery to the purchaser, by whatever means may be selected, are all inherent parts of the intercourse pertaining to trade or traffic in merchandise."

In re Bergen, 115 Fed., 342, Judge Hook, of Kansas, said:

"Commerce between the several States means more than the mere transportation of commodities. It comprises as well commercial intercourse in all of its phases. At the very foundation of interstate trade lies the right of the merchant or manufacturer to seek business in other States than that of his domicile by means of solicitation either in person or through traveling representatives."

In *Lamoine Lumber and Trading Co.* v. *Kesterson*, 171 Fed., 982, Judge Wolverton, of Oregon, said:

"'Commerce,' says Mr. Pomeroy (Pomeroy on Constitutional Law, p. 376), 'includes the fact of intercourse and of traffic, and the subject matter of intercourse and traffic. The fact of intercourse and traffic, again, embraces all the means, instruments, and places by and in which intercourse and traffic are carried on, and, further still, comprehends the acts of carrying them on at these places, and by and with these means.'"

In *Globe Elevator Company* v. *Adams*, 141 Fed., 882, Judge Sanborn, of Wisconsin, said:

"Interstate commerce comprehends intercourse for the purpose of trade, including transportation, purchase, sale, and exchange of commodities between citizens of different States, and the power to regulate it embraces all the instruments by which such commerce may be conducted."

In re Charge to Grand Jury, 151 Fed., 838, Judge Speer, of Georgia, after quoting from *Gibbons* v. *Ogden*, 9 Wheat., and *Gloucester Ferry Company* v. *Pennsylvania*, 114 U. S., among other things, the italics being ours, said:

"If any commercial transaction reaches an *entirety* in two or more States, and if the parties dealing with refer-

ence to that transaction *dealt from different States*, then the whole transaction is a part of interstate commerce of the United States. *United States* v. *Swift*, C. C. 122, Fed. 529."

In *United States* v. *Swift*, 122 Fed., 531, Judge Grosscup, of Illinois, the italics being ours, said:

"Commerce, briefly stated, is the sale or exchange of commodities. But that which the law looks upon as the body of commerce is not restricted to specific acts of sale or exchange. It includes the intercourse—*all the initiatory and intervening acts, instrumentalities and dealings*—that directly bring about the sale or exchange. Thus, though sale or exchange is a commercial act, so also is the solicitation of the drummer, whose occupation it is to bring about the sale or exchange. *Brennan* v. *Titusville*, 153 U. S., 289, 14 Sup. Ct. 829, 38 L. Ed. 719. The whole transaction from *initiation to culmination* is commerce."

On page 533, Judge Grosscup said:

"Unquestionably it is interstate commerce when purchasers from other States buy directly from the defendants' and have the meats shipped to them by the vendors. The *situs* of such a transaction, both as to initiatory intercourse, and as to transportation in furtherance of the exchange, includes a state other than the one from which the defendants deal.

"*I think the same is true of meat sent to agents, and sold from their stores.* The transaction in such a case, in reality, is between the *purchaser* and the agent's *principal*. The agent represents the principal at the place where the exchange takes place; but the transaction, *as a commercial entity*, includes the principal, and includes him *as dealing from his place of business*. Indeed such privity exists between the principal and the transaction, that he could, at the instant, sue upon the transaction in the Federal Courts; nor have I any question that if the conditions of this case were reversed, so that defendants were invoking the shelter, instead of seeking to escape, the obligations of the commerce clause, Federal law would be equal to the protection asked."

In *Swift & Co.* v. *United States*, 196 U. S., 398, this Court, in affirming the decision of Judge Grosscup, as to *both meth-*

ods of sale described by him, as quoted above, and in considering the allegations of the bill, the italics being ours, said:

> "It is said that this charge is too vague and that it does not set forth a case of commerce among the States. Taking up the latter objection first, commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one State, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to *find a purchaser* at the Stock Yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the States, and the *purchase* of the cattle is a *part* and *incident* of such commerce."

The above decisions, from this Court and others, show that everything which is necessary or convenient or which facilitates the transfer of the ownership of goods or merchandise from one to another, falls within the meaning and scope of commerce, and that interstate commerce includes everything that commerce includes, when it involves dealings between parties in different states, in relation to goods or personal property shipped from one State into another. It includes the shipment, and the successive steps of solicitation, signing a proposal or offer to buy by a purchaser in one state, the approval and acceptance of such offer and proposal by a seller in another state, and all the intervening acts, instrumentalities and facilities that bring about a consummated sale or transaction between parties dealing from different states.

Whether the Shipment of the Goods is Before or After the Sale, is Immaterial.

Nor is the character of the transaction determined or affected by the *situs* of the goods at the time the interstate transaction or contract is entered into—whether they are located in Missouri or in Virginia—if they are "transactions which either immediately, or at some stage in their progress, must be extra-territorial," or if they are "carried on in *more* than one State," or if they are transactions "between the citizens of *different* States," to use the language of this Court in some of the cases above cited. Whether the machines are located in Missouri or in Virginia, there is in either case, as appears from the facts characterizing the complainant's method of doing business, a transaction involving an agreement of sale—an offer mailed from one State to the owner of the machine in another—in which the principals—the seller and the purchaser—are citizens of different States, and are dealing from different States. The mere fact that in some cases the shipment has *preceded* the sale, so that the purchaser can inspect and test the goods and be induced to sign an offer for them, while in others it has *succeeded* the sale, cannot be regarded as affecting the *character* of the sale. Indeed, the sale is merely the realization or fruition of the purpose and object of the shipment, and the right to *sell* is a necessary incident or corollary of the *right* to ship. In no case, however, as set out in the bill and as one of the admitted facts of the case, has there ever been a *sale* by anybody *within the State of Virginia*. As stated in the bill, page 7, and not denied by the affidavits, neither the solicitor nor those employed by him "has any power to actually sell a machine or convey title thereto, *and has not sold a machine or conveyed title thereto in any case or instance.*"

Even in those cases where the purchaser has been allowed to test or try the machine, to determine its capacities, adaptation to the business of the perspective purchaser, superiority over other machines, and matters of that kind, and where he desired to retain the particular machine which he had tested and with which he had become familiar, the *solicitor* or salesman has not *sold* him such machine, and has had *no power* to sell him such machine, but has taken his order or proposal to buy that machine which had been shipped into Virginia for the purpose of being sold, and then such order, specifically describing the machine by its distinguishing style and serial number, is sent through the mails by the solicitor or salesman to the plaintiff at its Home Office in Missouri, where it is accepted or rejected according to circumstances, thus making the transaction, as a commercial entity, a transaction between the plaintiff in *Missouri* and the purchaser in *Virginia*, each dealing from its or his respective place of business, the same, in principle and in reality, as if the machine had been sent by the plaintiff to the prospective purchaser in Virginia, to examine and try, and the transaction had been concluded by correspondence, without any personal intermediary link or instrumentality represented by the salesman or solicitor. This makes the completed transaction, as we think, an *interstate* contract, transaction or dealing, irrespective of whether the machine was shipped from Missouri to Virginia before or after the contract was signed.

The Right to Import Includes the Right to Sell.

In support of the proposition that it is immaterial whether the goods be shipped into the State before or after the sale has been effected, if the shipment has been for the purpose of sale, and if the sale involves a transaction between the owner of the machine in *one* State and the purchaser in *another*, and not a mere sale *in* the State of the purchaser by an

agent, solicitor or representative of the owner, invested with full power to make sales, without referring the matter to his principal in another State, we think applicable all those decisions which hold that the sale is a mere *incident* to the right to import or ship the machine or goods into the State. The books are full of cases where the shipment from a foreign country or from a sister State has *preceded* the sale; and the Courts have uniformly held that the right to sell is a necessary *consequence* of the right to ship. Although this may be considered as so thoroughly adjudicated as to make the citation of authorities almost the subject of an apology, yet we beg to refer to a number of cases, so that the Court will have them convenient for consideration.

The leading case on the subject is that of *Brown* v. *Maryland*, 12 Wheat., 419, decided by this Court in 1827. This great case announced two leading propositions—one, that goods imported from a foreign country could not be taxed by a State until they had been sold, or by some other act commingled with the mass of property in the State; and the other, that a right to import *necessarily carried a right to sell in the State after the importation.* Afterwards, the first of these propositions was held inapplicable to goods imported from a sister State, though it remained as to goods imported from a foreign country; but the second proposition—that the *right to import* necessarily carried with it the *right to sell*—has never been changed or modified, and stands as the established law today.

On page 446 of the opinion in *Brown* v. *Maryland*, this Court, speaking through Chief Justice Marshall, in discussing the power of the Federal Government to regulate commerce with foreign Nations and among the several States, the italics being ours, said:

"If this power reaches the interior of a State, and may

be there exercised, it must be capable of authorizing the *sale* of those articles which it introduces. Commerce is intercourse: One of its most ordinary ingredients is traffic. It is inconceivable that the power to authorize this traffic, when given in the most comprehensive terms with the intent that its efficacy should be complete, should cease at the point when its continuance is indispensable to its value. To what purpose should the power to allow importation be given, unaccompanied with the power *to authorize a sale* of the thing imported? Sale is the *object* of importation, and is an essential ingredient of that intercourse, of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing, then, as importation itself. It must be considered as a component part of the power to regulate commerce. Congress has a right, not only to authorize importation, but to authorize the importer to sell."

In *Bowman* v. *Chicago & etc., Railway Co.*, 125 U. S., 499, which involved the shipment of goods from one State to another, this Court, the italics being ours, said:

"The very purpose and motive of that branch of commerce which consists in transportation, is that other and consequent act of commerce which consists in the *sale* and exchange of the commodities transported. Such, indeed, was the point decided in the case of *Brown* v. *Maryland*, 12 Wheat., 419, as to foreign commerce, with the express statement, in the opinion of Chief Justice Marshall, that the conclusion would be the same in case of commerce among the States."

In the above case, Mr. Justice Field delivered a separate *concurring* opinion, in which, the italics being ours, he said:

"That the right of importation carries with it the right to sell the article imported, does not appear to me doubtful. Of course, I am speaking of an article that is in a healthy condition, for when it has become putrescent or diseased it has ceased to be an article of commerce and it may be destroyed or its use prohibited. To assert that, under the Constitution of the United States, the importation of an article of commerce cannot be prohibited by the States, and yet to hold that *when* imported its use and

sale can be prohibited, is to declare that the right which the Constitution gives is a barren one, to be used only so far as the burden of transportation is concerned, and to be denied so far as any benefits from such transportation are sought. The framers of the Constitution never intended that a right given should not be fully enjoyed."

In *Leisy* v. *Hardin*, 135 U. S., 124, this Court, in dealing with a subject of interstate commerce, after citing and quoting from *Gibbons* v. *Ogden*, 9 Wheat., 1, and *Brown* v. *Maryland*, 12 Wheat., 419, and other cases, said:

> "Under our decision in *Bowman* v. *Chicago, &c., Railway Co., supra*, they had the right to import this beer into that State, and in the view which we have expressed they had the right to sell it, by which act alone it would become commingled in the common mass of property within the State."

In *Brimmer* v. *Rebman*, 138 U. S., 82, this Court, in considering a Statute of Virginia, in relation to the importation and sale of fresh meats shipped into the State without first having the same inspected, said:

> "The owner of the meats here in question, although they were from animals slaughtered in Illinois, had the right, under the Constitution, to compete in the markets of Virginia upon terms of equality with the owners of like meats, from animals slaughtered in Virginia or elsewhere within one hundred miles from the place of sale. Any local regulation which, in terms or by its necessary operation, denies this equality in the markets of the State is, when applied to the people or products or industries of other States, a direct burden upon commerce among the States, and, therefore, void. *Welton* v. *Missouri*, 91 U. S., 275, 281; *Railroad Co.* v. *Husen*, 95 U. S., 465; *Minnesota* v. *Barber*, above cited."

In re Rahrer, 140 U. S., 559, this Court, after citing *Bowman* v. *Railway Co.*, 125 U. S., 465, and *Leisy* v. *Hardin*, 135 U. S., 100, and stating that the Laws of Iowa, under consideration in those cases, were enacted in exercise of the police power of the State, the italics being ours, said:

"Hence it was held that inasmuch as interstate commerce, consisting in the transportation, purchase and *sale* and exchange of commodities, is national in its character and must be governed by a uniform system, so long as Congress did not pass any law to regulate it specifically, but in such a way as to allow the laws of the State to operate upon it, Congress thereby indicated its will that such commerce should be free and untrammeled and therefore that the laws of Ohio, referred to, were inoperative, in so far as they amounted to regulation of foreign or interstate commerce, in inhibiting the reception of such articles within the State, *or their sale upon arrival in the form in which they were imported there* from a foreign country or another State."

In *Hopkins* v. *United States*, 171 U. S., 582, where the defendants—brokers—were prosecuted as an illegal combination, under the Anti-Trust Law, on the ground that they had entered into a combination or conspiracy in the purchase and sale of cattle and other stock shipped to the Kansas City Yards for sale, this Court, the italics being ours, said:

"The selling of an article *at its destination,* which has been sent from another State, while it may be regarded as an *interstate sale* and one which the *importer* was entitled to make, yet the services of the individual employed at the place where the article is sold are not so connected with the subject sold as to make *them* a portion of interstate commerce, and a combination in regard to the amount to be charged for such services is not, therefore, a combination in restraint of that trade or commerce."

In *Pembina Mining Co.* v. *Pennsylvania*, 125 U. S., 184, this Court, in considering a Statute of Pennsylvania, the italics being ours, said:

"It is not perceived in what way the Statute impinges upon the commercial clause of the Federal Constitution. It imposes no prohibition upon transportation into Pennsylvania of the products of the corporation, *or upon their sale in the Commonwealth.* It only exacts a license tax from the corporation when it has an office in the Commonwealth for the use of its officers, stockholders, agents or employees."

But without citing other cases in this Court, and there are many, we think it cannot be denied that, ever since the case of *Brown* v. *Maryland*, 12 Wheat., 419, it has been the settled law that the *sale* of an article, shipped for the purpose of sale into a State from a sister State, *after the same has arrived there*, is a part of interstate commerce as much as the shipment of the article itself into the State, as otherwise, as expressed in many decisions, the shipment would be rendered nugatory and futile. Hence we say that the *time* of shipment, whether the shipment of machines by the plaintiff into Virginia for the purpose of sale, and afterwards sold in Virginia by the *plaintiff*, and not by the solicitor or salesman himself, *from its Home Office in Missouri*, is immaterial—the shipment may precede the sale or succeed it, without affecting the character of the transaction as an act of interstate commerce. This has been held in various cases in the Circuit Courts, as we think an examination will show.

In *United States* v. *Tucker*, 188 Fed., 743, Judge Sater, of Ohio, the italics being ours, said:

> "Neither a sale nor the place of sale and delivery is alone the test of interstate commerce, nor does transportation, although an adjunct to commerce, constitute a transaction interstate commerce. A sale, *the parties to which are from different States*, when such sale necessarily involves the transportation of goods, is a transaction of interstate commerce, whether the contract of sale be made in the one State or the other, *or made before or after shipment*.
>
> "Every negotiation, initiatory and intervening act, contract, trade, and dealing between citizens of any State, or territory, or the District of Columbia, with those of another political division of the United States, which contemplates and causes such importation, whether it be of goods, persons, or information, is a transaction of interstate commerce."

In *Oregon R. & Navigation Company* v. *Campbell*, 180 Fed.,

255, Judge Wolverton, of Oregon, after stating and quoting *Leisy* v. *Hardin*, 135 U. S., 100, the italics being ours, said:

> "Nor does it seem to me that the principle applied in the Tax Cases is wholly applicable here. The principle rests, not upon the fact that the property taxed has ceased to be interstate commerce, but upon the condition that it has, in the course of its transportation, arrived at its destination, is at rest and enjoying the protection which the laws of the State afford, and is taxed without discrimination like all other property. Such is the doctrine of *American Steel & Wire Co.* v. *Speed*, 192 U. S., 500, 24 Sup. Ct., 365, 48 L. Ed., 538. The Court in this case adheres to the rule announced in *Leisy* v. *Hardin, supra*, that the *fact of sale at point of destination* was essential to relieve the property from the character of interstate commerce, but holds that, notwithstanding the property continues to be interstate commerce, it may yet be taxed by the State in which it has come to rest under the conditions just narrated. The doctrine has been reaffirmed in *General Oil Company* v. *Crain*, 209 U. S., 211."

In *Ex-parte Eaglesfield*, 180 Fed., 561, Judge Quarles, of Wisconsin, after quoting from *Gibbons* v. *Ogden* and *Brown* v. *Maryland*, and after citing and quoting from many cases, the italics being ours, said:

> "From the showing made and the authorities herein considered, I deduce the following propositions:
>
> "First. The applicant was engaged in interstate commerce under a valid coasting license which conferred upon her a right so to do.
>
> "Second. The right to trade *necessarily includes the right to sell.*
>
> "Third. The potatoes, in the hold of the vessel, remained an import *until she had sold and delivered* them on the dock."

In *United States* v. *Green*, 137 Fed., 187, Judge Ray, of New York, the italics being ours, said:

> "As early as the decision of *Brown* v. *Maryland*, 12 Wheat., 419, 6 L. Ed., 673, it was held that interstate commerce could not be stopped at the external boundaries of

> the State, but must enter the interior of the State *and include a sale therein.* This power to *sell,* as a part of interstate commerce, was applied in that case to foreign commerce, but Chief Justice Marshall said the power would be the same as applied to commerce between the States."

We have quoted from a number of decisions to show the universal and unvarying adoption and application of the second of the two great propositions established as far back as 1827, in the case of *Brown* v. *Maryland,* namely, that the *sale* of goods, as well and equally as other things, is necessarily included under the word "commerce," and that the right to import or ship merchantable goods from a foreign country or from one State to another necessarily includes the right to *sell* the goods *after* they have been imported or shipped into the State under the Commerce Clause of the Constitution. The right to *sell* cannot be divorced from the right to *import* from foreign countries or from one State into another, and the right to *import* into any State, and the *consequent* right to sell *after* the importation or transportation, is a right unqualifiedly secured to every person, firm or corporation by the Constitution of the United States. It follows, therefore, that the *sales* of machines shipped by the plaintiff into the State of Virginia *after* they arrive there for the purpose of sale, by a contract between the *purchaser* in Virginia and the *plaintiff* in Missouri, and not by the *solicitor* or salesman himself in Virginia, and without the *participation* of the plaintiff dealing from Missouri, is protected by the Commerce Clause of the Constitution.

We are not here discussing the right of a State to *tax* the machines themselves, even though they are subjects of interstate commerce, after they have been shipped into a State and reached their destination and come to a state of rest, by the imposition of the usual *ad valorem* tax, the same as im-

posed upon other goods of like character, because that is not the question involved in this case, and we are not now concerned with that phase of the matter. To the class of cases bearing on the right of a State to impose a general *ad valorem* tax on articles constituting interstate commerce, after the same have reached their destination and come to a state of rest in the State, even though they remained unsold and in the original package, or right to impose a merchant's or *occupational* tax upon the *agent* or dealer in the State selling such articles, whether made in the State or shipped in from a sister State, without discrimination between the two, or the right to impose a *franchise* tax on a foreign corporation maintaining an *office* in the State for its general corporate purposes, and carrying on therefrom a purely domestic business in the State, may be referred the cases of *Parham* v. *Woodruff*, 8 Wall., 1236; *Brown* v. *Houston*, 114 U. S., 622; the *Horn Silver Mining Company* v. *New York*, 143 U. S., 305; *Pembina Consolidated Mining Company* v. *Pennsylvania*, 123 U. S., 181; *Kehrer* v. *Stewart*, 197 U. S., 60; *Armour Packing Co.* v. *Lacy*, 200 U. S., 226; *American Steel & Wire Company* v. *Speed*, 192 U. S., 500; and other similar cases that might be cited. In none of these cases, however, was the foreign corporation engaged *merely* in selling its goods in the State, whether already shipped into the State or not, by procuring orders or *proposals* to buy the same, through a solicitor or salesman who is legally merely a "drummer" to procure orders or *proposals* to buy the same, which were afterwards transmitted to the owner in another State for approval and acceptance *before* passing title to the goods, requiring, in every instance, *before* a sale or transfer of title, an interstate transaction or contract involving parties dealing *with each other as principals from different States*, as in the case now before the Court.

If the plaintiff have the right to *import* its machines from Missouri into Virginia, as articles of interstate commerce, and if it have the right to *sell* the goods in Virginia as an *incident and consequence* of the right to import them into Virginia, and we submit that under the decisions of this Court and others there can be no question as to *either* of these rights, then the shipment and sale, *taken together,* constitute interstate business or commerce, and the defendants have no right, by imposing penalties under the Statutes of Virginia, or otherwise, to interfere with such interstate business of the plaintiff. The sale of the machines, which the plaintiff has shipped into the State of Virginia, for the purpose of sale, by a contract between the *purchaser* in Virginia and the *plaintiff* in Missouri, both acting as *principals* and dealing directly with each other from their respective states, is as much a part or *ingredient* of interstate commerce as the shipment itself, and is equally protected under the Commerce Clause of the Constitution.

As already pointed out, it is plain that every sale of a machine in Virginia is the subject of a written contract, which is neither a *Virginia* contract nor a *Missouri* contract, but is an *interstate* contract, in which the respective parties or principals reside respectively in Virginia and Missouri, so as to constitute a transaction of interstate commerce or business, as distinguished from a domestic business.

We have dwelt upon the right of the plaintiff to make a sale of its machines in Virginia after they have been shipped there for the purpose of sale, in view of the fact stated in the bill, at page 9, showing that in some cases the purchaser is allowed to purchase and retain the machine which he had been permitted to test and try at his place of business for a few days, to determine its capacities, adaptation to his business, superiority over machines of other makes, and matters of that

kind, and where, having become familiar with that particular machine, he desired it instead of another directly shipped to him from Missouri, which the bill says occurs perhaps in three cases out of ten. The bill, at page 8, shows that, owing to the *nature* of the machine, which is a highly technical and specialized species of adding, computing and calculating machine, it is *necessary* for the salesman or solicitor, in order to secure offers or proposals for the purchase of machines, to show the same to prospective purchasers, and in some cases to allow them to try the machines, by installing them in their offices or places of business for a few days or a limited period, to determine their adaptability and value to them in their particular business, but, nevertheless, as the bill shows, at page 8, when a party who has tried or tested a machine already shipped by express into the State of Virginia to be sold, and when he has tested and tried it as above explained, and desires to purchase the particular machine which he has tried and has in his possession, he is required to sign a *written offer* or proposal to purchase the machine, in which the particular machine is designated in the offer or proposal which he signs, by specific description, referring to it by its distinguishing style and serial number, *after which* his offer or proposal is sent through the mails to the plaintiff at Poplar Bluff, Missouri, for consideration and acceptance, if on investigation the financial status of the purchaser be satisfactory, so that there is *no sale* of the machine or transfer of the ownership in it to such purchaser *until* his offer or proposal has been accepted and signed at Poplar Bluff, Missouri, so as to become a completed and effective contract, segregating such particular machine from all others, and specifying and relating to it alone, and to no other machine whatever. The bill shows that this has been the invariable practice in all those cases—perhaps in three cases out of ten—where the purchaser is allowed to buy and retain the machine already shipped into Virginia for the purpose of sale, and which he

had tried and tested before signing the offer or proposal to buy the same. In all of these cases, as well as in all others to fill orders already signed before the shipment of a machine, there is a *shipment* of a machine from Missouri into Virginia, the only difference being that in the one case the shipment is made for the *purpose* of a sale and in anticipation of a sale, while in the others the shipment is made *after* the offer or proposal to purchase has been secured by the saleman or solicitor. We find no decision of this Court, or of any other, which holds that the sale of a machine *already* shipped into a State for sale, by a contract entered into between the *principals*, dealing from their respective States, instead of by the solicitor or salesman himself, is not an interstate sale, but a local sale, so as to be without the protection of the Interstate Commerce Clause of the Constitution.

This distinguishes this case from such cases as *Emert* v. *Missouri*, 156 U. S., 296, 310, where the salesman sold sewing machines which he took with him in his wagon and actually sold and delivered to such purchasers as he found in Missouri, without referring the matter to his principal in another State, to actually make the sale, where the property was delivered and the title transferred *by the salesman himself*, without merely procuring an order or proposal to purchase, which was then transmitted to his principal for consideration and acceptance; and from such cases as *Singer Sewing Machine Company* v. *Brickell*, 233 U. S., 304, where, in all the Counties of Alabama except the County of Russell, the sales of sewing machines were made and delivered from the owners' stores or regularly established places of business in the State, without involving a reference to the owner in another State to complete the sale, and so without the introduction into the transaction of a contract or dealing between the two principals in their respective places of business in different states. As already said, we know of no case in which the particular course of business and dealing as that presented in *this* case

was involved; in which the solicitor or salesman had no power to make a sale and never did make a sale, even of the machines which were present in the State and which the purchaser, after test or trial, bought, and could only buy by *dealing directly* with the manufacture and owner at its place of business in another State, instead of with the solicitor or salesman within the State.

The Interstate Character of the Complainant's Business Evidenced by the Contracts Themselves.

As already said, there is in this case a particular circumstance that characterizes the complainant's business, and stamps it with the unmistakable *inditia* of interstate commerce that is not to be found in any of the cases heretofore decided in this Court, or in any others, that we have been able to find, which circumstance, as it seems to us, must remove every possible vestige of doubt as to the interstate character of the plaintiff's business, although, as above said, we do not consider that such circumstance need be relied on to entitle the complainant to the full protection of the Commerce Clause of the Constitution. As it exists, however, as already pointed out, it should be taken into decisive consideration, as it shows that the plaintiff is not engaged in domestic business in Virginia, which makes it amenable to its Statutes.

As we have repeatedly pointed out, the salesman or solicitor in Virginia has no *authority or power* to sell a machine and has never sold a machine *in* the State of Virginia. His power and authority are limited to soliciting offers or proposals to buy machines, which are then sent to the company at its home office in Missouri for approval and acceptance, or rejection if the financial responsibility of the proposed purchaser or other circumstances seem to justify. No *contract* for the sale of a machine is *made* by the salesman or solicitor *in* Virginia,

but simply an *offer* or proposal secured, the same as in the case of any ordinary drummer or solicitor, so that the proposed contract of purchase is not *ripened* into a contract until after it has been transmitted to the home office and approved and accepted by the plaintiff. This makes the contract strictly and purely an *interstate* contract, in which the principals are dealing with each other from different states, which exactly brings the contract within the definition of interstate commerce or business, as defined by Judge Speer *in re Charge to Grand Jury*, 151 Fed., 838, where he says that "If any commercial transaction reaches an *entirety* in two or more states, and if the parties dealing with reference to that transaction dealt from *different* states, then the whole transaction is a part of interstate commerce of the United States;" and as defined by Judge Grosscup in *United States* v. *Swift*, 122 Fed., 531, where he said that "The transaction in such case, in reality, is between the *purchaser* and the agent's *principal*," and that "The agent represents the principal at the place where the exchange takes place, but the transaction as a commercial entity, includes the principal, and includes him as dealing from his place of business;" and as defined by this Court in *Hopkins* v. *United States*, 171 U. S., 597, where the court said that interstate commerce includes the "sale and exchange of commodities between the citizens of different states;" and as defined by this Court in *Veazie* v. *Moore*, 14 How., 573, where it is said that interstate commerce includes "transactions which either immediately, or at *some stage* of their progress, must be extra-territorial;" and as defined by this Court in *Welton* v. *State of Missouri*, 91 U. S., 279, where this Court said that interstate commerce includes the "sale and exchange of commodities between the citizens of other countries, and between the citizens of different states;" not to quote other specific definitions.

Substantially, not to say literally, the character of contract involved in the complainant's method of doing business was involved in the case of *Aultman, Miller & Co.* v. *Holder,* 68 Fed., 467, decided by Judge Swan, of Michigan, which was an action of assumpsit by the Ohio Company against Holder, the Michigan agent, for a balance due from him. The Michigan statute contained a provision invalidating "contracts made in this state" by a foreign corporation which had not filed its articles of association in Michigan and paid the franchise tax imposed by the statute, and the defendant relied on such statute. The contract with the agent in that case contained a provision that "This contract not valid unless countersigned by our manager at Lansing, and approved at Akron." The question arose as to whether the contract which had been signed by the agent in Michigan and then sent to the company at Akron for approval and signature, was to be considered as made in Michigan or as made in Ohio. Judge Swan, in deciding the question, the italics being ours, said:

> "The questions arising in this case have been argued with great learning and ability by counsel, and, although the discussion has taken a wide range, it has left for determination but two inquiries: (1) Was the contract sued upon made in this state? (2) Is the statute upon which the defense is founded a regulation of commerce obnoxious to the constitutional grant of the power over that subject conferred upon congress?
>
> "In regard to the first of these questions, it will be noticed that the provision of the statute upon which reliance is had for the avoidance of the defendant's liability for the sum found due from him to the plaintiff limits its penalty to 'contracts made in this state after the first day of January, 1894.' This contract was made, it is admitted, after that date. What was the *locality* of its execution? It did not become a contract until all the parties executed it. By its express provision it was not to be valid until countersigned by the agent of the plaintiff at Lansing, and approved at Akron, Ohio. This latter requisite—the approval of the plaintiff—is the crowning act of its consummation, as expressing the

agreement of the parties. It, therefore, was not made until, by plaintiff's approval, it was perfected and adopted. Until then it was an imperfect obligation, having no force whatever. The act which gave it vitality was performed *outside* of the state of Michigan, *i. e.*, in the state of Ohio. It seems clear, therefore, that it was not a contract made *in* this state, within the prohibition of the statute. The question of construction of the language of the statute is analogous to that arising upon the alien labor acts, which have been the subject of much discussion in the Federal Courts. In cases founded on those acts, a vital element of the offense is the making of a contract in a foreign country with a non-resident alien, previous to the immigration or importation of such alien into the United States, to perform labor or service in this country, and in pursuance of which such non-resident alien comes to the United States and enters upon the performance of the contract. There, as here, the character of the act is made to depend upon the *locality* of the execution of the prohibited contract. It is perfectly lawful, notwithstanding the alien labor acts, to contract with an alien within the jurisdiction of the United States, *U. S.* v. *Craig*, 28 Fed. 795, 799; *U. S.* v. *Edgar*, 45 Fed. 44; same case on error, 1 C. C. A. 49, 48 Fed. 91. Thus, in the Michigan statute, no penalty is directed against the execution of a contract *outside* of the state by a corporation which has not complied with the provisions of the acts of 1891 and 1893. The inquiry, therefore, is not by what law the contract is to be construed,—whether that of the place of its execution or that of its performance,—or of the form in which suit may be brought upon it. The single question is, where was it executed? And upon the admitted facts of this case, evidenced by the stipulation, the concessions of counsel, and the fair construction of the clause 'approved at Akron,' but one answer can be given to this inquiry. It became the *contract of the parties at Akron, Ohio*, and was not made in the state of Michigan, within either the language or the spirit of the act of the legislature pleaded in defense. Giving to the language of the act its natural and obvious meaning, the phrase 'made in the state of Michigan' can have but one interpretation, and must be held to designate contracts there perfected by the assent of all parties. It is not necessary to invoke the rule that a penal act is to be

strictly construed, for the language employed has excluded all doubt of the intent of the legislature. The contract sued upon is not avoided by the act of 1893.

"2. Upon the second question, as to the constitutionality of the state statute, there is, in my judgment, as little doubt as upon the first. By the contract sued upon the defendant 'is hereby authorized to sell Buckeye mowers, reapers, and binders, and extra parts thereof, in the following territories, viz., Laingsburg and vicinity and Elsie and vicinity, including the townships of Washington and Elba, in Gratiot County, and Chapin in Saginaw County, and the west half of Fairfield in Shiawasee County, for and during the season of 1894.' The defendant, therefore, was not *a resident local agent* of the plaintiff, and, although selling on commission, was really, as the contract contemplates, nothing more than an itinerant vendor in the territory specified. The fact that the company had a warehouse at Lansing, where it stored its implements, and the necessary 'repairs' or parts of the machines, which it manufactured and sent here for sale, in order that it might meet the demands of those having its machines to supply such repairs or parts, is immaterial in this case. Without doubt, property so stored and kept within the state of Michigan, for the convenience of the company and the promotion of its business, in affording facilities to its customers for the purchase and repair of the implements which it manufactured and sold, unless these were merely in transit for delivery to customers here, would authorize the state to tax such property for the protection it received, but the right to taxation of such property is not in question here. The state statute really imposes a tax upon the corporations included within its provisions for the *privilege* of selling their wares in Michigan, and therefore is obviously a tax upon interstate commerce within the provisions of the federal constitution, and the decisions of the Supreme Court of the United States."

The above case was appealed, and the decision of this Court is reported in *Holder* v. *Aultman*, 169 U. S., 89. This Court affirmed the decision of Judge Swan as to the *locus* of the contract, which entitled the appellee to an affirmance of

the decision without the necessity of considering the constitutional question involved. The question decided by this Court was as to whether the contract had been made in Michigan or in Ohio. On page 89 this Court, after stating the facts, said:

> "A contract is made when, and not before, it has been executed or accepted by both parties so as to be binding upon both."

On page 90, after reciting that the contract was drawn in Michigan, and that it contained the words "This contract not valid unless countersigned by our manager at Lansing, Michigan, and approved at Akron, Ohio," this Court, the italics being ours, said:

> "The Circuit Court found, as facts, that the parties entered into the contract on April 29, 1894, which was the date of its approval at the plaintiff's Home Office in Ohio; and that it was executed, accepted and approved, as set forth therein, and in the endorsement thereon.
>
> "Whether, therefore, we look to the contract itself, to the plaintiff's declaration, or to the findings of fact by the court, it clearly appears that the contract, when, after being drawn up in writing and signed by the plaintiff's local agent, it was tendered to the defendant and assented to and signed by him in Michigan, contained a distinct stipulation that it was not valid unless, not only signed by the plaintiff's manager in Michigan, but also approved at the plaintiff's principal office in Ohio; and that it was on April 29, 1894, and *at Akron in the State of Ohio*, that the contract was approved by the plaintiff's secretary at its principal office, and *then and there*, for the first time, became a valid and binding contract between the parties. It cannot therefore be considered as 'made,' within the meaning of the statute in question, at any earlier time, or *other* place.
>
> "The approval at the plaintiff's Home Office was not a ratification by the plaintiff of an unauthorized act of one of its agents; for each of its agents, Gillett in first signing the contract, and Worth in countersigning it,

> appears to have acted within the strict limits of his authority. But the final approval by the plaintiff itself was an act which, according to the express stipulation of the parties, and in the contemplation of every person who affixed his signature to the paper, was a necessary step to *complete* the execution of the instrument by the plaintiff, and to make it *a valid and binding contract* between the parties."

The above decisions by Judge Swan and of this Court, to cite no other cases, plainly show that the offers or proposals to purchase machines, which the complainant's salesman or solicitor procures in Virginia, containing a provision that "This order subject to approval of the company" or "Not effective unless approved by the company," and which are sent to the home office and approved and accepted in Missouri, are not contracts "made" in the state of Virginia, but outside of the state; and as they are contracts between principals, one dealing from Virginia and the other from Missouri, they are *interstate* contracts, made in furtherance and consummation of interstate business. Owing to the *interstate character of the contracts* by which the machines are sold, and the ownership transferred from the manufacturer in Missouri to the purchaser in Virginia, they entitle the manufacture to invoke the protection of the commerce clause of the Constitution. The nature of the contract and of the transaction between the parties clearly stamps the business as interstate commerce.

Although the plaintiff has the right, as we contend, under the authorities quoted, to ship or transport its machines into Virginia for the purpose of sale, and of soliciting purchasers for the machines *after* they have arrived in Virginia, and to fill the orders obtained for them by the delivery of machines already shipped into Virginia for the purpose of being sold, as well as to solicit orders for machines *before* they have been

shipped, yet the circumstance that the *final approval* of the proposed contracts by the plaintiff itself "was an act which, according to the express stipulation of the parties," contained in each and every offer or proposal to purchase a machine, "was a necessary step to complete the execution" of the contract, "and to make it a valid and binding contract between the parties," is sufficient in and of itself to render the contract or transaction one of *interstate* business, protected by the Constitution, and exempt from subjection to the statutes of Virginia, and from the power of the defendants to interfere in any way with the business of the plaintiff so carried on.

The Complainant is Entitled to Relief in This Court by Injunction.

If we are correct in our contentions above, then it is plain from the facts stated in the bill, and particularly in paragraphs 7, 8, 9, 10 and 11 thereof, at pages 14-16, showing that the defendants were *threatening* to institute proceedings against the plaintiff and the injury and damage that would result to its business by such proceedings, that the remedy sought by the bill by way of injunction is the proper and recognized mode of relief to which the plaintiff is entitled. In fact, it is one of the ancient grounds for equitable relief. If a defendant is threatening a proposed act or course of dealing that will be to the financial injury of the plaintiff, equity has interposed in innumerable cases to prevent such injury without waiting for a completed or overt act. That the defendants would have instituted proceedings against the plaintiff is manifest from the fact shown in the affidavit of Jennie E. Grubbs, at page 37, from the letter of Mr. Prentis, the chairman of the Corporation Commission, at page 51, dated October 1, 1912, where, after saying that the defendants felt it to be their duty to proceed against the plaintiff "for the purpose of enforcing the demand

that it comply with the laws of Virginia applicable to foreign corporations doing business in this state" he added that, "We will not, however, take any legal steps for ten days from this date"; and from the affidavit of Mr. Prentis, where, at page 51, he says that, "If this chancery suit had not been instituted, the Dalton Adding Machine Company would have been proceeded against under the laws of Virginia upon the allegation that it was doing business in Virginia in violation of the Virginia statute." All these things make it plain that the plaintiff was in imminent peril of proceedings against it which, if our contention as to the character of its business be correct, would have been unjustifiable and unauthorized and have imposed burdens and injuries upon its business. The outcome of the proceedings which were thus threatened and imminent can be readily inferred from the statements of Mr. Prentis in his affidavit, at page 52, where he says that, "It is possible, *though not probable*, that this Commission, upon the issue of fact thus raised, might have decided the case in favor of the Dalton Adding Machine Company." Thus the Chairman of the Commission that was to *pass in the first instance* upon the questions involved plainly states that it was not "probable" that the finding would have been in favor of the plaintiff. This statement as to the *probable* outcome of the proceedings was made by the Chairman of the Commission after a full disclosure of the plaintiff's mode of doing business contained in its bill and affidavits in support thereof. This attitude of the Commission certainly shows a menacing state of mind, to say the least.

There have been so many cases in this Court and in the Circuit Courts where a bill for injunction has been entertained against state and municipal officials to prevent *threatened* proceedings without waiting for an overt act or consummation of the threats that it is hardly necessary to

quote decisions, but for the convenience of the court we will quote one or two.

In the case of *Prentis* v. *Atlantic Coast Line*, 211 U. S., 230, this Court—the italics being ours—said:

> "It will not be necessary to *wait* for a prosecution by the Commission. We may add that when the rate is fixed a bill against the Commission to restrain the members from enforcing it will not be bad as an attempt to enjoin legislation or as a suit against a state, and will be the proper form of remedy. *Reagan* v. *Farmers Loan & Trust Co.*, 154 U. S., 362; *Smyth* v. *Ames*, 169 U. S., 466; *Chicago, Milwaukee & St. Paul Ry. Co.* v. *Tompkins*, 176 U. S., 167; *Hanley* v. *Kansas City Southern Ry. Co.*, 187 U. S., 617; *McNeil* v. *Southern Ry. Co.*, 202 U. S., 342; *Mississippi Railroad Commission* v. *Illinois Central Ry. Co.*, 203 U. S., 335; *Ex parte Young*, 209 U. S., 123."

In *Adams Express Co.* v. *New York*, 232 U. S., 14, this Court entertained a bill and ordered relief where the suit was brought to restrain the *threatened* enforcement of certain ordinances of the City of New York, without requiring the plaintiff to wait for the threats to be carried out by proceedings instituted by the city for the enforcement of the ordinances.

Nor is it necessary, in order to entitle the plaintiff to relief in the protection of its interstate business, for the Court to find that the Statute of Virginia is void as being unconstitutional, if its enforcement against the complainant, *as the defendants were threatening* to enforce it, would have the *effect* of depriving the complainant of the enjoyment of the rights guaranteed to it under the Commerce Clause of the Constitution, or of interfering with such rights. This has been held by this court in many cases, but we deem it sufficient to quote from only two or three cases, for the convenience of the court, as to this point.

In *Poindexter* v. *Greenhow*, 114 U. S., 295, this Court—the italics being ours—said:

> "It is no objection to the remedy in such cases that the statute whose application in the particular case is sought to be restricted is not *void on its face*, but is complained of only because its operation *in the particular instance* works a violation of the constitutional right; for the cases are numerous where the tax laws of a state, which in their general and proper application are perfectly valid, have been held to become void in particular cases, either as unconstitutional regulations of commerce, or as violations of contracts prohibited by the Constitution, or because in some other way they operate to deprive the party complaining of a right *secured to him* by the Constitution of the United States."

The above language is repeated with approval in *General Oil Co.* v. *Crain*, 209 U. S., 227, and this Court, in asserting its appellate jurisdiction, whether the decision below gave or refused protection, the italics being ours, said:

> "It being then the *right* of a party to be protected against a law which violates a constitutional right, whether by its terms *or the manner of its enforcement*, it is manifest that a decision which denies such protection gives effect to the law, and the decision is reviewable by this court."

In *Adams Express Co.* v. *New York*, 232 U. S., 23, this Court, recognizing the right to relief against the improper enforcement of a law or ordinance irrespective of the question of its validity, as we understand the language of this Court, said:

> "This suit was brought to restrain the enforcement against the Adams Express Company of a group of ordinances of the Board of Aldermen of the City of New York upon the ground that, *as applied to that company*, these ordinances constitute an unconstitutional interference with interstate commerce and deny to it the equal protection of the laws."

In view of the above decisions, and their number could be increased indefinitely, it is plain that it is not necessary for the complainant to allege or prove that the particular statute, the enforcement of which is sought to be restrained, is *unconstitutional* or void, if it appear that the defendants are seeking, by its enforcement, "to deprive the party complaining of a right secured to him by the Constitution of the United States," and that it is "the right of a party to be protected against a law which violates a constitutional right, *whether* by its *terms* or the *manner* of its enforcement."

For cases recognizing a right to injunctive relief, see *Southern Ry. Co.* v. *Greensboro Ice & Coal Co.*, 134 Fed., 82; *Scott* v. *Donald*, 165 U. S., 112; *Ex parte Young*, 209 U. S., 155; *Virginia Coupon Cases*, 114 U. S., 295; *Donald* v. *Scott*, 67 Fed., 856; *State of Louisiana* v. *Lagarde*, 60 Fed., 191; *Southern Express Co.* v. *Mayor*, 116 Fed., 758, and many other cases referred to in these decisions.

The defendants are insisting, as we understand their position, that they are protected by the statutes of the State of Virginia, unless such statutes are unconstitutional; and that the bill does not allege the unconstitutionality of such statutes. The allegations of the bill show that the plaintiff is exercising rights *guaranteed to it* under the Constitution, and that the defendants are threatening to enforce the statutes of Virginia *in a way* that will interfere with and deprive the plaintiff of the exercise of its constitutional rights. The seventh paragraph of the bill, after referring to the Virginia statute and the Commerce Clause of the Constitution of the United States, alleges:

> "That to enforce the above provisions of the Virginia statute against your orator will be and is in violation of the above provision of the Constitution of the United States; and that the above provision of the statute of

> the State of Virginia, when construed or employed, or attempted to be construed and employed, so as to prevent, interrupt, trouble, molest, or in any way interfere with your orator, in carrying on its business as aforesaid, is void and of no force or effect whatsoever, as being contrary to the above provision of the Constitution of the United States."

The eighth paragraph of the bill alleges and represents that the plaintiff has the right to carry on the business that it is carrying on in the State of Virginia, and to use or employ any convenient instrumentalities or methods in doing so, without being prevented, interrupted, troubled, molested, or interfered with by the defendants or any one else, and alleges:

> "That the defendants have no right to prevent, interrupt, trouble, molest or interfere with the business of your orator under color of the statute of the State of Virginia, above quoted, or otherwise, but that the said defendants are threatening so to do, and as your orator has reason to believe and fear, and does believe and fear, they will do so, unless restrained by an injunction from this honorable court."

The ninth and tenth paragraphs of the bill set out the irreparable damage and injury that will result to the plaintiff, the lack of any adequate remedy at law, and the fact that the right of the plaintiff to do business in the State of Virginia as it has been doing, and the fines or penalties threatened to be imposed upon it by the defendants, amount to the value of three thousand dollars ($3,000.00), exclusive of interest and costs, and in fact greatly more than that.

We submit and insist that the allegations of the bill are amply sufficient, and bring the case literally and affirmatively within the terms of the decisions of this Court quoted above.

Plainly, if the statute of Virginia be *un*constitutional, it can afford no right or protection to the defendants, and equally plainly can it afford no right or protection to them if they are seeking or threatening to construe and enforce it *in a way* that will *deprive* the complainant of the free exercise and enjoyment of its *con*stitutional rights. A valid statute no more protects a party in an *illegal* enforcement of it than does an *invalid* statute. In both cases the statute fails to give protection—in the one case because it is void, and in the other because it does not *extend to* and cover the illegal enforcement of it. It is a matter of indifference to the plaintiff in this case whether the Virginia statute be considered as *un*constitutional or whether the rights of the complainant be considered as *con*stitutional. The complainant is entitled to protection from violation of or injury to its rights as much in the one case as in the other. Paragraph 14 of Section 24 of the New Federal Judicial Code gives the District Court original jurisdiction of all suits at law or in equity authorized by law to be brought by any person "to redress the *deprivation*, under color of any law, statute, ordinance, regulation, custom, or usage of any state, of any right, privilege or immunity, secured by the Constitution of the United States." Hence, if the plaintiff is exercising rights, "secured by the Constitution of the United States," this court has jurisdiction to "redress the deprivation" of such rights by the defendants, no matter under what statute or other alleged right they are attempting to protect themselves, as much and as fully as *if* the statute or law under which they were claiming to act were *un*constitutional. In a word, the plaintiff is entitled to relief if the statute be *un*constitutional, or if it has *con*stitutional rights which the enforcement of the statute would deprive it of.

The Incidental and Insignificant Sale of Rolls of Paper and Ribbons by the Solicitor.

In the affidavit of Mr. Wilson is a statement that there has been some paper, ribbons and supplies sold direct from the office of Mr. Grubbs, and this seems to be relied on as an evidence that the plaintiff has been doing business in Virginia that is not of an interstate character. This is certainly a little matter to whittle a charge of violating the Virginia statute down to. It should be understood by the Court that a ribbon and narrow strip of paper in the form of a roll is used on each of the plaintiff's machines, so that as computations are being made the items and results are printed on the paper to form a visible audit of the same. These rolls of paper sell for a few cents only, and it is a matter of convenience for the purchasers of machines that the solicitor or salesman keeps a few rolls of paper and a few ribbons in stock, so that when a user of a machine runs out of paper he can get a roll for three cents, or five cents, without sending to the Home Office in Missouri to procure it. As stated in the affidavit of Grubbs, the solicitor, at page 69, the sale of machines amounted to more than $1500 per month and the sales of paper, ribbons and other supplies to barely $8 per month, or to scarcely more than to one-half of one per cent. This trifling sale of paper and ribbons, which now appears to be advanced for the first time as a ground for insisting that the plaintiff has violated the Corporation laws of Virginia, even if it be worthy of consideration at all, is susceptible of two satisfactory answers.

First. The plaintiff has the same right to ship these rolls of paper and supplies into Virginia for the purpose of sale, and of afterwards selling them, that it has to ship machines into Virginia for the purpose of sale and afterwards selling

them. As we have pointed out in numerous decisions, the right to *sell* in Virginia is a necessary consequence and incident to the right to *ship* into Virginia. There can be no question that under the interstate commerce clause of the Constitution the plaintiff has the right to *ship* machine supplies into Virginia for the purpose of sale, and under the decisions it has a right to *sell* supplies after they have been shipped in, as a necessary incident and consequence of the right to ship. Hence the sale of supplies in Virginia, after they have been shipped there for the purpose of sale, is authorized and justified under the same decisions which authorize and justify the sale in Virginia of *machines* which have been shipped into Virginia for the purpose of sale.

Second. The sale of paper and ribbons is merely *incidental* to the main business, which is the sale of machines. The right to carry on the main business carries with it the right to carry on the incidental business in aid and furtherance of the main business. This Court has recognized this in a number of cases.

In *Crutcher* v. *Kentucky*, 141 U. S., 59, this Court, in holding that an express company was doing an interstate business, the italics being ours, said:

> "We do not think that the difficulty is at all obviated by the fact that the express company, *as incidental to its main business*, which is to carry goods between different states, does also some local business by carrying goods from one point to another within the state of Kentucky. This is, probably, quite as much for the accommodation of the people of the state as for the advantage of the company. But whether so or not, it does not obviate the objection that the regulations as to license and capital stock are imposed as conditions of the company's carrying on the business of interstate commerce which was manifestly the *principal* object of its organization."

In *Kehrer* v. *Stewart*, 197 U. S., 66, involving a tax "upon all agents of packing houses doing business in this state," instead of being directed solely against foreign corporations, this Court, referring to the above case, the italics being those of the court, said:

> "The case is readily distinguishable from that of *Crutcher* v. *Kentucky*, 141 U. S., 47, wherein a state law requiring a license from agencies of foreign express companies was held to be a regulation of interstate commerce, so far as applied to a corporation of another state engaged in interstate business, although as *incidental* thereto it did some local business by carrying goods from one point to another in the state of Kentucky."

The above case was dealing with a tax imposed by the state on the *agencies*, an *occupational* tax laid on *all* engaged in the *particular* line of business, as a tax on all lawyers, doctors, brokers and others—a wholly different situation from the one now under consideration—but both of the above cases by this Court, to cite no others, recognize the right of a foreign corporation to do certain acts or make certain sales which a state will not have cause to complain of, because they are merely *incidental* to the main interstate business carried on by it.

Some Other Minor Matters.

With the affidavit of Mr. Wilson is exhibited a card given him by the salesman or solicitor Grubbs, in which he describes himself as "Sales Manager for Virginia." Even though these words could be regarded as of importance, which we deny, yet we submit that it makes no difference to the issues of this case *how* the salesman Grubbs chose to represent himself on his business calling cards. The facts are shown as to exactly how the business was carried on, and they, of course,

must govern. Nothing, however, is more common than for "drummers" and salesmen to print the name of the firm or company that they represent on their business calling cards and to represent themselves as occupying a certain relation to the firm or company. This serves to introduce them to parties on whom they call, but it does not change the *character* of their relation or of the business which they are carrying on.

With Mr. Wilson's affidavit there is also exhibited a copy of a contract with the telephone company, in which the salesman Grubbs signed the name of the company by himself as the Virginia Sales Manager. This, like the calling cards, is of no consequence, as it cannot change the real character of the business which the plaintiff was carrying on in Virginia. It was a contract that Grubbs made, without the knowledge or authority of the plaintiff, and was merely his own act, as shown in his affidavit at page 68.

There is also an affidavit of one Lawder in reference to the imposition of a tax assessed against the plaintiff at the office of the salesman Grubbs, which the affidavit says was paid by the plaintiff. The bill, and the affidavits on behalf of the plaintiff, repeatedly state that the machines which Grubbs had at his office or in his possession were the property of the plaintiff. This being the case, the state had a right to impose the usual local or *ad valorem* tax on them, as has been held in many cases, beginning with *Woodruff* v. *Parham*, 8 Wall., 123, and repeated in *Brown* v. *Houston*, 114 U. S., 622, and repeatedly recognized by this Court in subsequent cases. If the tangible property of the plaintiff, after the interstate shipment has ended and the property has come to its destination or place of rest, is subject to the usual local or *ad valorem* tax imposed on like property, and as to this there can be no question, we do not

see how the payment of such tax by the plaintiff can have any significance or refute its claim that it is engaged in interstate business. No question is raised in this case as to the right of the state to impose and collect the usual *ad valorem* tax on the tangible property of the plaintiff in the State of Virginia. Consequently, the payment of such tax is of no significance or consequence, so far as the issues of this case are concerned.

The Acts of the Defendants Amount to a General Appearance.

In view of the pleadings and affidavits filed by the defendants, we submit that they cannot object to the jurisdiction of the court over their person, and that the court below had full jurisdiction. We will briefly suggest the grounds for this contention.

As already explained, the defendants on the appearance day, entered a special appearance, page 20, and on the same filed a demurrer, page 21.

The demurrer assigns or specifies five grounds or causes of demurrer, of which the first and third read as follows:

> "First: That the said complainant has not, in and by said bill, made or stated any such case as doth and ought to entitle it to any such relief as is thereby sought and prayed for;
>
> "Third: That the said complainant has an adequate remedy at law."

The above grounds of demurrer on their face go to the *equity* or merits of the bill, whether so intended or not, and so plainly fall within the rule that, where a special appearance is filed, any answer, demurer, or other action which attacks the *equity* of the bill automatically abrogates or over-

rules the special appearance, and converts it into a general appearance.

Shipman on Equity Pleadings, Edition 1897, page 76;
Foster's Federal Practice, Edition of 1892, page 200;
Jones v. *Andrews,* 10 Wall., 330;
Hale v. *Continental Life Ins. Co.,* 12 Fed., 360;
United States v. *American Bell Tel. Co.,* 29 Fed., 45;
Foote v. *Massachusetts Ben. Assn. of Boston,* 39 Fed., 24;
Edgell v. *Felder,* 84 Fed., 69;
Barnes v. *Western Union Tel. Co.,* 20 Fed., 554;
St. Louis, Etc., Railroad v. *McBride,* 141 U. S., 130.

Furthermore, in view of the affidavits filed by the defendants directed to the *merits* or *equities of the case,* the defendants' special appearance has been automatically superseded by a general appearance, in law, which waives all objection to the jurisdiction of the court that can be waived by a defendant, and confers on the court all the jurisdiction that can be conferred by consent.

Conclusion.

In view of all the foregoing, we respectfully submit and insist that the plaintiff's method of selling its machines, as disclosed by the facts stated in the bill and the affidavits in support of the same, is plainly one of interstate business or commerce; that, being interstate business, it is fully protected under the Commerce Clause of the Constitution from any prevention, interruption, trouble, molestation, or interference, on the part of the defendants or anyone else; that consequently the plaintiff's business is exempt from the imposition of the fines or penalties provided in the Statutes of Virginia, which the defendants are threatening to impose upon it; that the plaintiff, in order to continue its business

as heretofore carried on, without let or hindrance of any kind or nature whatsoever, is entitled to invoke the injunctive protection of the Federal Court to ensure the undisturbed enjoyment of its rights; and that the District Court should have considered the case on its merits and have found that the plaintiff was carrying on a lawful interstate business that could not be interfered with, and should have consequently ordered an injunction to protect it in the exercise and enjoyment of such business. We therefore submit that the decision should be reversed with instructions to the District Court to grant an injunction.

THOMAS A. BANNING,
For Appellant.

SAMUEL WALKER BANNING,
Of Counsel.

FILED
FEB 25 1915
JAMES D. MAHER
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 190.

THE DALTON ADDING MACHINE COMPANY

v.

THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH OF VIRGINIA, ROBERT R. PRENTIS, WILLIAM F. RHEA, AND J. RICHARD WINGFIELD, MEMBERS OF SAID COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

I. STATEMENT OF THE CASE.

This is an appeal from an order entered by the District Court of the United States for the Eastern District of Virginia, denying an interlocutory injunction.

The facts and the pleadings are sufficiently set out in the written opinion filed by Pritchard, Circuit Judge, made a part of the record and found on p. 76 of the transcript of the record.

The bill alleged that the plaintiff was a foreign corporation organized under the laws of the State of Missouri, and that its principal office and place of business was at

Poplar Bluff, in that state; that its agents, or salesmen, or drummers solicited business in the State of Virginia; and that the Corporation Commission of the State of Virginia had *threatened to institute* proceedings against complainant to compel it to comply with section 1104, Va. Code, Supplement 1910, which requires every incorporated company doing business in this state to have an office in this state, at which all claims against the company may be audited, settled and paid; and which further requires every foreign corporation doing business in this state to present to the State Corporation Commission a written power of attorney appointing some person as its resident agent, and also to present two duly authenticated copies of the charter of the company and a certificate of the Auditor of Public Accounts showing the payment into the treasury of the entrance fee required of foreign corporations by sec. 1104, Va. Code, Supplement 1910, which reads as follows:

> "Every incorporated company doing business in this state shall have an office in the state, at which all claims against the company due residents of the state may be audited, settled and paid. Every such company incorporated under a jurisdiction beyond the limits of this state (and hereinafter designated as foreign corporations) shall, before doing business in this state, present to the State Corporation Commission (a) a written power of attorney executed in duplicate, appointing some person residing in this state its agent, upon whom all legal process against the corporation may be served, and who shall be authorized to enter an appearance in its behalf; (b) two duly authenticated copies of the charter of the corporation; and (c) a certificate of the auditor of public accounts, showing the payment into the treasury of the fee required by law to be paid by such corporation, and shall obtain from said Corporation Commission a certificate of authority to transact business in the state. If it shall be made to appear to the State Corporation Commission that said corporation has complied with the law relative to the obtaining of a certificate of authority for foreign corporations of the character of the applicant corporation, then said

corporation commission shall issue to said corporation a certificate of authority to transact business in the state. Said commission shall file and preserve in their office one copy each of the power of attorney, charter, certificate of the auditor and a certificate of the commission granting such certificate of authority, and forward copies of said documents to the Secretary of the Commonwealth, who shall file and preserve the same in his office. Whenever by reason of his removal from the state or from any other cause the powers of such resident agent shall be terminated, then such foreign corporation shall, by like written power of attorney, executed in duplicate and filed with the corporation commission as above provided, appoint another resident agent; one copy of such power of attorney shall be filed and preserved in the office of the corporation commission, and the other copy thereof transmitted to the Secretary of the Commonwealth to be filed in his office. If the charter of any foreign corporation thus authorized to transact business in this state is amended, two duly authenticated copies of such amendment shall be presented to the corporation commission and filed as copies of the original charter are required to be filed, and the fee required by law on such amendment shall be paid in the manner prescribed by law. Any foreign corporation which has heretofore paid the fee required by law to entitle it to transact business in this state, and has otherwise complied with the law heretofore existing relative thereto, shall not, on application for certificate of authority to transact business in this state, be required to pay such fee again, nor to file a copy of the charter with the Secretary of the Commonwealth, if a copy thereof is already on file in his office. Such corporation shall pay the clerical fees for such certificate of authority and for filing such papers as prescribed by law."

Penalties for the enforcement of the said statute are found in section 1105, Va. Code, Supplement 1910, which is copied into the transcript of the record on p. 79. The amount of the entrance fee required of foreign corporations is determined by sec. 38a of the Tax Bill, as amended by Acts 1910, p. 77, found in Va. Code, Supplement 1910, p. 527, which reads as follows:

"Sec. 38a. Every foreign corporation, when it obtains from the State Corporation Commission a certificate of authority to do business in this state, shall pay an entrance fee into the treasury of Virginia to be ascertained and fixed as follows:

"For a company whose maximum capital stock is fifty thousand dollars, or less, thirty dollars; for a company whose capital stock is over fifty thousand dollars, and not to exceed one million dollars, sixty cents for each one thousand dollars or fraction thereof; over one million dollars, and not to exceed ten million dollars, one thousand dollars; over ten million dollars, and not to exceed twenty million dollars, one thousand two hundred and fifty dollars; over twenty million dollars and not to exceed thirty million dollars, one thousand five hundred dollars; over thirty million dollars, and not to exceed forty million dollars, one thousand seven hundred and fifty dollars; over forty million dollars and not to exceed fifty million dollars, two thousand dollars; over fifty million dollars and not to exceed sixty million dollars, two thousand two hundred and fifty dollars; over sixty million dollars and not to exceed seventy million dollars, two thousand five hundred dollars; over seventy million dollars, and not to exceed eighty million dollars, two thousand seven hundred and fifty dollars; over eighty million dollars, and not to exceed ninety million dollars, three thousand dollars; over ninety million dollars, five thousand dollars; provided, however, that foreign corporations without capital stock shall pay fifty dollars only for such certificate of authority to do business in this state.

"For the purpose of this act the amount to which the company is authorized by the terms of its charter to increase its capital stock shall be considered its maximum capital stock."

As was said in the opinion of Pritchard, J., on p. 77 of the transcript of the record, "it is not alleged that the Corporation Commission of Virginia has required plaintiff to pay any license tax, or that any fines have been imposed upon it for a violation of the statute; nor does it appear that any summons has been issued against plaintiff to show cause why it should not be proceeded against for violation of the stat-

ute. The principal ground relied upon for relief is based upon the allegation that the State Corporation Commission has threatened to begin a suit or take proceedings against complainant to enforce the provisions of the statute to which reference is made. In other words, that the Chairman of the Commission has intimated that plaintiff's method of transacting business brings it within the purview of the statute, and that under the law it is required to take out a license and pay a license fee."

The defendants filed their demurrer to the bill and asserted, as grounds for demurrer, the following (p. 21 of the transcript of the record):

> "First: That the said complainant has not, in and by the said bill, made or stated any such cause as doth or ought to entitle it to any such relief as is hereby sought and prayed for.
>
> "Second: That these defendants have no personal or individual interests in the matters and things referred to in said bill.
>
> "Third: That the said complainant has an adequate remedy at law.
>
> "Fourth: That this court has no jurisdiction to hear and determine this cause for the reason that this is a suit against the State of Virginia.
>
> "Fifth: That this court has no jurisdiction to hear and determine this cause, for the reason that the State Corporation Commission, when hearing an alleged violation of the penal statutes of Virginia referring to foreign corporations, with a view of determining whether a fine should be imposed upon such corporation for a violation of such statutes, is a 'Court' of the State of Virginia, and this court is therefore without power to enjoin the said Commission when engaged in the discharge of its judicial functions."

II. THE DEMURRER TO THE BILL SHOULD BE SUSTAINED.

(a) Because the complainant had an adequate remedy at law.

We contend that the District Court did not err in deny-

ing the injunction, on the ground, so often reiterated in this Court, (a) that the collection of taxes under state authority will not be enjoined by a court of the United Sates on the sole ground that the tax was illegal, but that it must appear that the party taxed has no adequate remedy by the ordinary processes of the law, and (b) that it must also appear that there are special circumstances bringing the case within some recognized head of equity jurisdiction. An examination of the cases in which these rules have been applied will show that the demurrer to the complainant's bill should be sustained.

In *Dows* v. *Chicago*, 78 U. S. 108, 20 L. ed. 65, a suit in equity was filed in the Federal court to restrain the collection of a tax levied by the city of Chicago upon shares of the capital stock of the Union National Bank of Chicago, owned by the complainant, who was a citizen and resident of the State of New York. The grounds alleged for the relief were that there was in the tax of the shares of the bank a want of uniformity and equality with other personal property taxes in Illinois, as required by the constitution of that state, and that the shares of the bank followed the person of the owner and were incapable of having any other situs than that of his domicile, and were not, therefore, property within the jurisdiction of the state. This Court, in denying the injunction, held that a bill in equity to restrain the collection of a tax would not be sustained on the ground alone that the tax was illegal, but that there must be some special circumstances attending a threatened injury of this kind distinguishing it from a common trespass and bringing the case under some recognized head of equity jurisdiction before the remedy of injunction could be invoked. The court in discussing this question said:

> "It is upon taxation that the several states chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible.

Any delay in the proceedings of the officers upon whom the duty is devolved of collecting the tax may derange the operations of government and thereby cause serious detriment to the public.

"No court of equity will, therefore, allow its injunction to issue to restrain their action, except where it may be necessary to protect the rights of the citizens whose property is taxed and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits or produce irreparable injury. * * * The equitable powers of a court can only be invoked by the presentation of a case of equitable cognizance. There can be no such case, at least in the Federal courts, where there is a plain and adequate remedy at law. And except where the special circumstances we have mentioned exist the party of whom an illegal tax is collected has ordinarily ample remedy, either against the officer making the collection or the body to whom the tax is paid. Here such remedy existed."

In *State Railroad Tax Cases*, 92 U. S. 575, 23 L. ed. 663, certain mortgagees and stockholders of certain railroads filed their bills in the Federal court of Illinois, praying for an injunction to prevent the collection of taxes assessed by the proper officers of the State of Illinois against the railroad companies. In the course of his opinion, reversing the lower court and ordering the injunction dissolved, Mr. Justice Miller used the following language on page 613:

"It has been repeatedly decided that neither the mere illegality of the tax complained of nor its injustice, nor irregularity of themselves, give the right to an injunction in a court of equity. * * * * * The Government of the United States has provided, both in customs and in the internal revenue, a complete system of corrective justice in regard to all taxes imposed by the general government, which, in both branches, is founded on the principle of appeals within the executive departments. If the party aggrieved does not obtain satisfaction in this mode, there are provisions for recovering the tax after it has been paid by suit against the collecting officer. *But there is no place in this system for the*

application to a court of justice until after the money is paid. (Italics ours.)

"That there might be no misunderstanding of the universality of this principle, it was expressly enacted in 1867, that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.' (R. S., sec. 3224); and though this was intended to apply alone to taxes assessed by the United States it shows the sense of Congress of the evils to be feared if courts of justice could, *in any case*, interfere with the processes of collecting the taxes on which the government depends for its continued existence. It is a wise policy. It is founded in the simple philosophy derived from the experience of the ages that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment; and to do this successfully other instrumentalities and other modes of procedure are necessary, than those which belongs to courts of justice," citing *Cheatham* v. *U. S.*, 92 U. S. 85, 23 L. ed. 561; *Nichols* v. *U. S.*, 74 U. S. 122, 19 L. ed. 125; *Dows* v. *Chicago, supra.*

In *Hannewinkle* v. *Georgetown,* 82 U. S. 547, 548, 21 L. ed. 231, the court says:

"It has been the settled law of this country for a great many years, that an injunction bill to restrain the collection of a tax on the sole ground of the illegality of the tax cannot be maintained. There must be an allegation of fraud; that it creates a cloud upon the title; that there is apprehension of a multiplicity of suits or some cause presenting a case of equity jurisdiction."

In *State Railroad Tax Cases, supra,* the court also used this language on page 614:

"We do not propose to lay down in this case any absolute limitation of the powers of a court of equity in restraining the collection of illegal taxes; but we may say that, in addition to illegality, hardship, or irregularity, the case must be brought within some of the recognized foundations of equitable jurisdiction, and that mere errors or excess in valuation or hardship or in-

justice of the law, or any grievance which can be remedied by a suit at law either before or after payment of taxes, will not justify a court of equity to interpose by injunction to stay collection of a tax."

In *Shelton* v. *Platt*, 139 U. S. 591, 35 L. ed. 273, Thomas C. Platt filed his bill against the Comptroller of the State of Tennessee and certain local officers to restrain the collection of a license tax from the United States Express Co., of which the said Thomas C. Platt was president and stockholder. It was alleged that the Comptroller had issued a distress warrant to the sheriff of Hamilton county and that the sheriff "has levied on or is about to levy on the property of the United States Express Co. and the Comptroller threatened to issue another distress warrant to collect the license tax for the year 1889." Mr. Chief Justice Fuller, in delivering the opinion of the court, said that the "question whether, even if the act under which the tax was imposed were unconstitutional and the tax void, complainant on behalf of the express company was entitled to the relief accorded, meets us on the threshold."

After citing and quoting from *Dows* v. *Chicago*, *supra*, and from *Union Pacific Railroad* v. *Cheyenne*, 113 U. S. 516, 528, 28 L. ed. 1098, 1101, the learned Chief Justice goes on to say that the sole ground upon which jurisdiction in equity could be regarded as invoked in that case was on the ground of irreparable injury, and that the averment in the petition was not sufficient to bring it under that ground of equity jurisdiction.

It was argued in the case that a court of equity had jurisdiction to restrain the collection of a tax and that the tax was wholly illegal and void, citing a number of cases, but the court, after examining said cases, said that the jurisdiction would be found to have rested "on other grounds than merely the unconstitutionality of the tax involved."

In *Indiana Manufacturing Co.* v. *Koehne*, 188 U. S. 681, 47 L. ed. 651, a complainant filed its bill in equity in the Circuit Court of the United States for the District of Indiana,

to enjoin the collection of certain taxes. It was alleged that the tax had been assessed against the corporation and process had issued after the collection thereof, including all the years from 1893 to 1898, both inclusive; that such taxes were illegal because they were assessed pursuant to a law of the State of Indiana upon the value of certain letters patent of the United States for inventions owned by the corporation, and that said law was in violation of the Federal Constitution, and was, therefore, void. In discussing the case, the court, speaking through Mr. Justice Peckham, said, p. 684:

> "It has long been the settled doctrine of the Federal courts that the mere illegality of a tax, or the mere fact that the law upon which the tax is founded is unconstitutional, does not entitle a party to relief by injunction against proceedings under the law, but it must appear that the party has no remedy by the ordinary processes of the law, or that the case falls under some other recognized head of equity jurisdiction such as multiplicity of suits, irreparable injury," citing *Cruickschank* v. *Bidwell*, 176 U. S. 73, 80, 44 L. ed. 377, 380; *Pittsburgh C. C. & St. L. R. Co.* v. *West Virginia Board of Public Works*, 172 U. S. 32, 43 L. ed. 354.

In *Arkansas Building and Loan Association* v. *Madden*, 175 U. S. 269, 44 L. ed. 159, a bill was filed in the Circuit Court for the Western District of Texas praying for an injunction against the Secretary of State of Texas to prevent the collection of a franchise tax required by an act of the legislature from foreign corporations, which franchise tax was increased over the previous franchise tax paid by the complainant. The bill prayed for an injunction to prevent the Secretary of State from forfeiting the right of the company to do business in the state. The Circuit Court denied the injunction and this was affirmed by the Supreme Court of the United States which held (syllabus) that an injunction will not be granted against the collection of a franchise tax from a foreign corporation where there is nothing to indicate inability of the corporation to pay the tax or of the defendant to respond in judgment, if the tax be found to be

illegally enacted, and no special circumstances are set up justifying the exercise of equity jurisdiction other than consequences which the complainant could easily avert without loss or injury by paying the tax, even though the validity of the law might be more conveniently tested by the party denying it by bill in equity than by an action at law. Mr. Chief Justice Fuller, in delivering the opinion of the court, reiterated the rule laid down in *Dows* v. *Chicago, supra,* that the collection of taxes under state authority would not be enjoined by a court of the United States on the sole ground that the tax was illegal, but that it must appear that the party taxed had no adequate remedy by the ordinary processes of the law, and that there were special circumstances bringing the case within some recognized head of equity jurisdiction. In the course of his opinion the Chief Justice said, p. 273:

> "And, on principle, the interference of the courts of the United States by injunction with the collection of state taxes, or with state administration of matters of internal police, can only be justified under a plain case not otherwise remediable.
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> "The grievance complained of in this case is that the Arkansas corporation entered on the transaction of business at a time when the annual franchise or license tax was $10.00 and that it is now required to pay $205.00 by subsequent law, which it alleges is unconstitutional.
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> "The penalty denounced on failure to pay is the forfeiture of the right to do business in the state, and the complainant averred that if forfeiture was declared it would be subject to irreparable injury and a multitude of suits. * * * * But the bill of complaint did not set forth any facts tending to show that complainant could not escape forfeiture by payment of the $205.00 under protest and recover back the money so paid if the law should be held void. We assume that the payment would under the circumstances be compulsory and not voluntary, and no reason is seen why the rule recovering the money back would not apply. That rule as applicable here is that an action will lie for money paid under compulsion on an illegal demand, the person making it being notified that his right to make it is contested."

The logical sequel of this case is found in the case of *Gaar, Scott & Co.* v. *Shannon*, 223 U. S. 468, 56 L. ed. 510, In that case, a foreign corporation, chartered by the laws of Indiana, filed its suit in the state court against the Secretary of State of Texas for the recovery of franchise taxes required by the laws of Texas of foreign corporations doing business in the state. The petition alleged that the petitioner only transacted an interstate business in the State of Texas in the sale of its products and prayed for recovery of the franchise tax for the years 1905-6. A demurrer interposed by the Secretary of State was sustained and the case was brought to the Supreme Court of the United States by successive appeals. This Court in sustaining the demurrer, speaking through Mr. Justice Lamar, followed the Texas court in holding that the company was not within the purview of the statute because it did not apply to companies doing a strictly interstate business, and that if this company were doing only a strictly interstate business the franchise tax could not be required thereof.

In the course of its opinion the court, in commenting upon the fact that payment under protest to avoid the consequences of a statute not being voluntary but compulsory might be recovered back, used the following language:

> "Otherwise plaintiff might be without any remedy whatever, for in *Arkansas Building & L. Ass'n* v. *Madden*, 175 U. S. 269, 44 L. ed. 159, it was held that a tax payer was not entitled to an injunction against the enforcement of a similar statute of he State of Texas unless he could show that there was no adequate remedy at law. And as payment under such an act was treated as compulsory, for which suit might be maintained, and as there was nothing to indicate inability of complainant to pay, or of the respondent to respond to a judgment, the bill was dismissed without prejudice. That necessarily recognized that the plaintiff had the right to pay under protest, sue the officer for the amount exacted and recover it back in case it should be made to appear that the statute was void."

In *Boise Artesian Hot & C. Water Co.* v. *Boise City*, 213 U. S. 276, 53 L. ed. 796, a bill was filed in the Circuit Court of the United States for the District of Idaho by a West Virginia corporation to enjoin the enforcement of a municipal ordinance imposing a monthly license fee of $300.-00 for the privilege granted to lay and repair water pipes in the streets and alleys of said city. There was a demurrer to the bill which, upon the consideration of the merits of the case set forth therein, was sustained by the judge of the Circuit Court and the bill dismissed. An appeal was taken to this Court. Speaking through Mr. Justice Moody, the Court based its decision solely upon the ground that the plaintiff was not entitled, on the allegations of the bill, to relief in equity in the Federal courts. In the course of its opinion, the court said, p. 281:

> "It is obvious that the rights of which the company seeks to avail itself are rights cognizable in a court of law, and not rights created only by the principles of equity. The sum of the company's contentions is that the imposition of the license fee was illegal, unconstitutional and void. All these contentions are open in a court of law. It is a guiding rule in equity that, in such a case, it will not interpose where there is a plain, adequate, and complete remedy at law. This rule at an early date was crystallized into a statute form by the 16th section of the Judiciary Act (1 Stat. at L. 82, chap. 20. Rev. Stat. section 723, U. S. Comp. Stat. 1901, p. 583), which, if it has no other effect, emphasizes the rule and presses it upon the attention of the courts. *New York Guaranty & I. Co.* v. *Memphis Water Co.*, 107 U. S. 205, 214, 27 L. ed. 484, 487. It is so well settled and has so often been acted upon that no authority need be cited in its support, though it must not be forgotten that the legal remedy must be as complete, practicable, and efficient as that which equity could afford. *Walla Walla* v. *Walla Walla Water Co.*, 172 U. S. 1, 11, 43 L. ed. 341.
>
> "A notable application of the rule in the courts of the United States has been to cases where a demand has been made to enjoin the collection of taxes or other im-

positions made by state authority, upon the ground that they are illegal or unconstitutional. The decisions of the state courts in cases of this kind are in conflict, and we need not examine them. * * * * Very different considerations arise where courts of a different, though paramount, sovereignty interpose in the same manner and for the same reasons. An examination of the decisions of this court shows that a proper reluctance to interfere by prevention with the fiscal operations of the state governments has caused it to refrain from so doing in all cases where the Federal rights of the persons could otherwise be preserved unimpaired. It has been held uniformly that the illegality or unconstitutionality of a state or municipal tax or imposition is not of itself ground for equitable relief in the courts of the United States. In such a case the aggrieved party is left to his remedy at law, when that remedy is as complete, practicable and efficient as the remedy in equity. And the rule applies as well where the right asserted is by way of defense."

The court then goes on to examine the cases of *Dows* v. *Chicago, supra, Hannewinkle* v. *Georgetown, supra, Shelton* v. *Platt, supra.* In the course of its examination of the last case cited, the court on page 283 uses the following language:

"The bill alleged that the property of the company was employed in interstate commerce, and was necessary to the conduct of it, and that if it were seized by the sheriff it would greatly embarrass the company in the conduct of its interstate business, subject it to heavy damage, and the public to great loss and inconvenience, and that the company was without adequate remedy at law. A plea alleged that the only remedy under the laws of the state was to pay the taxes under protest and bring suit to recover them back. The plaintiff had an injunction from the lower court. This court reversed the decree upon appeal, upon the ground that the remedy in equity would not lie merely because the tax was unconstitutional, unless there were allegations in the bill otherwise bringing the case within some acknowledged head of equity jurisdiction, and that the allegations of the

bill were not sufficient to do this. This case was followed in *Allen* v. *Pullman Palace Car Co.*, 139 U. S. 658, 35 L. ed. 303, and in *Pacific Exp. Co.* v. *Seibert*, 142 U. S. 339, 35 L. ed. 1035, where a tax was alleged to be unconstitutional because imposed upon interstate commerce, because it denied to the taxpayer the equal protection of the laws, and because it was void for repugnancy to the Constitution of the state. * * * * *

"It is safe to say that no case can be found where this court has deliberately approved the issuance of an injunction against the enforcement of an ordinance resting on state authority, merely because it was illegal or unconstitutional, unless further circumstances were shown which brought the case within some clear ground of equity jurisdiction. These decisions make it clear that an injunction ought not to be granted unless the bill, besides alleging illegality and unconstitutionality of the ordinance imposing the license fee, sets forth other circumstances which bring the case within some acknowleged head of equity jurisdiction."

Applying the rule of the above cases to the petition filed in the case at bar, the first inquiry that arises is whether the complainant had an adequate remedy at law, and then we may inquire whether it has alleged any special circumstances which will bring the case under any of the recognized heads of equity jurisprudence, such as fraud, multiplicity of suits, or irreparable injury.

It will be noted that it has not been compelled to pay the tax, and it is not suing to recover the same back, nor have proceedings even been instituted against it, in order to compel it to pay the tax. If, as was said in *Railroad Tax Cases*, 92 U. S. 575, 23 L. ed. 663, quoted above, there is no place in the Federal system for the application to a court of justice until after the money has been paid, and if the policy of the Federal law is to have the same weight in the case at bar as it did in that case, certainly there would be all the more reason for refusing the injunction where the only allegation is that the state officers, charged with the duty of assessing the tax, are merely threatening to institute pro-

ceedings for the ascertainment of the facts upon which an assessment may be made.

In the next place, as noticed in the opinion of Pritchard, J., it is not contended that the statute in question is unconstitutional, but the complainant simply denies that it is doing business in the State of Virginia within the purview of that statute. This is a question of fact susceptible of proof before the proper tribunal. That tribunal, made so by the laws of Virginia, is the State Corporation Commission.

Its powers and duties are defined by chapter 56a, Va. Code 1904, sec. 1313a, and acts amendatory thereof, which, so far as pertinent to this case, are set out in an appendix to this brief:

From a study of the statutes set out therein, it will appear as was said by Pritchard, J., in his opinion (Record, p. 80) that:

> "If proceedings should be instituted by the Corporation Commission, it would be for that body to determine upon the facts as to whether the complainant is a foreign corporation doing business in the state. If it then appears that the complainant has not made any sales of machines except those of an interstate character, it could not be held liable. There is a provision in the statute which authorizes an appeal from any of the judgments or decrees of the Corporation Commission [see section 34 of section 1313a, Va. Code 1904, quoted above], and if, after a hearing that body should be of opinion that the complainant was liable for the penalties imposed by the statute it would have the right to take an appeal to the Supreme Court of Appeals of the State and if that Court should affirm the judgments of the Commission, complainant, upon a proper showing, would be still afforded an opportunity to carry the case to the Supreme Court of the United States.
>
> "The liability of the complainant in the event proceedings should be instituted against it would necessarily depend upon the facts as established by the evidence offered before the Corporation Commission. Thus it will be seen that ample provision has been made by which the very question sought to be determined here may be judi-

cially determined, first, by the Corporation Commission, and if, as we have stated, complainant should feel aggrieved by the judgment of that Court, then by the Supreme Court of Appeals of the State of Virginia, and finally, if there should be a constitutional question involved, by the Supreme Court of the United States."

In addition to the remedy thus provided by the statutes of Virginia, the language used by Chief Justice Fuller in *Arkansas Building & Loan Ass'n* v. *Madden*, 175 U. S., 269, 273, 44 L. ed. 159, quoted above, may be paraphrased here as follows:

"The bill of complaint does not set forth any facts tending to show that complainant cannot escape the penalties denounced by the statute by the payment of the tax under protest and recover the money so paid if the law should be held void. Payment under such circumstances would be compulsory and not voluntary, and no reason is assigned why the rule for recovering the money back would not apply. That rule as applicable here is that an action will lie for money paid, under compulsion, or an illegal demand, the person making it being notified that his right to make it is contested.

"There is no allegation in the bill to indicate the inability of the corporation to pay the tax, or of the fiscal officers of the state to respond in judgment if the tax be found to be illegally exacted, and no special circumstances are set up to justify the exercise of equity jurisdiction, other than consequences which the complainant could easily avert without loss or injury by paying the tax and subsequently suing to recover the same back, if it be illegally exacted."

The rule thus laid down as to the right of a party to recover taxes illegally exacted and paid under protest has received the sanction of the Supreme Court of Appeals of Virginia in *Phoebus* v. *Manhattan Club*, 105 Va. 144, citing with approval *Sanborn* v. *Dickinson*, 97 U. S. 181, 24 L. ed. 926. See, also, *Richmond* v. *Judah*, 5 Leigh, 32 Va. 305; *Phillips* v. *Portsmouth*, 115 Va. 180.

In this connection, it is pertinent to note the provisions of sec. 1313c, Va. Code 1904, which reads as follows:

Sec. 1313c. Relief of corporations from excessive or erroneous taxation.

> Whenever the State Corporation Commission shall certify to the auditor of public accounts that any corporation has, since the twenty-first day of May, nineteen hundred and three, paid into the state treasury an erroneous amount or an amount in excess of that required by law on account of any charter tax or fee, it shall be the duty of the auditor to draw his warrant on the state treasurer in favor of said corporation for the erroneous or excessive amount so certified to have been paid by it. An amount sufficient to pay the same is hereby appropriated.

This section, read together with the provisions of clause 27 of section 1313a, quoted above, would authorize the complainant to pay the money under protest and then file a complaint before the Corporation Commission to recover the money so paid, and if the Corporation Commission would certify to the Auditor that the money had been erroneously paid, provision is made for the Auditor to draw his warrant on the State Treasurer in favor of the corporation for the erroneous amount so certified to have been paid.

Thus it would seem that the complainant has three adequate remedies at law: first, to contest the matter on a direct proceeding instituted by the State Corporation Commission to compel compliance with the statute; second, to comply with the statute under protest and then institute proceedings before the Corporation Commission to recover the tax paid; and, third, to pay the money under protest and then sue the fiscal officers of the Commonwealth for the recovery of the money so paid under protest.

(b) Because the petition does not set out any special circumstances bringing the case within some recognized head of equity jurisdiction.

The allegations of the petition pertinent here are as follows (pp. 14 to 17, printed record):

"That to enforce the above provisions of the Virginia statute against your orator will be, and is, in violation of the above provisions of the Constitution of the United States, and that the above provisions of the statute of the State of Virginia, when construed or employed, or attempted to be construed or employed, so as to prevent, interrupt, trouble, molest or in any way interfere with your orator in carrying on its business as aforesaid, is void and of no force and effect whatsoever as being contrary to the above provision of the Constitution of the United States. * * *

"That the defendants have no right to prevent, interrupt, trouble, molest or interfere with the business of your orator under color of the statute of the State of Virginia above quoted, or otherwise, but that said defendants are threatening so to do.

"* * * * That if the said defendants are permitted to prevent, interrupt, trouble, molest, or in any way interfere with the interstate commerce business carried on in the State of Virginia, as they are threatening to do, by attempting to enforce against it, or its salesman or solicitor, the provisions of the Virginia statute above quoted, even though said prevention, interruption, trouble, molestation or interference be of a temporary character, it will cause your orator to lose sales of its adding, listing and calculating machines to its competitors and injure its standing and prestige in the State of Virginia and other States * * * will be encouraged and caused to commence proceedings against it under their various statutes relating to foreign corporations, which they have heretofore forborne to do upon your orator's explanation to them of its business methods, and in various ways operate to work irreparable financial loss. * * * *

"That in enforcing the provisions of the statute * * *, as threatened by the defendants, your orator has reason to fear, and does fear, that there will be many separate and distinct offences or penalties imposed, and a multiplicity of proceedings had and taken against your orator, or its salesman or solicitor, which will entail a large and unknown amount of expense * * * ."

The cases above cited are authority for the rule that general allegations of injury will not suffice, but that specific allegations of fact must be alleged. Allegations that the

plaintiff will be disturbed, annoyed and injured are conclusions of law rather than specific allegations of fact. *Indiana Manufacturing Co.* v. *Koehne,* 188 U. S. 681, 47 L. ed. 651.

An allegation that other states will be encouraged to take similar proceedings does not seem worthy of presentation to a justice of the peace, much less to a court of record, nor is it necessary to notice the same.

It seems clear that the allegation of fear that there will be many separate and distinct offences or penalties imposed, and a multiplicity of proceedings had and taken, is not sufficient to bring the case within the doctrine that equity will enjoin a multiplicity of suits. In *Pacific Exp. Co.* v. *Seibert,* 44 Fed. 310, the petition alleged that a penalty was imposed for each day's delay in the payment of a tax, and this was urged as a ground for equitable jurisdiction. On this point, the court said (p. 315):

> "Multiplicity of suits having, also, been earnestly urged upon the court as a ground of jurisdiction in the case, it is proper to consider that question. It is real and not imaginary suits, it is probable and not possible danger of multiplicity of suits that will warrant the assumption of jurisdiction on that ground. While it is true, as the complainant contends, that the state might bring a separate suit for each day's penalty, the court would hardly be justified in acting upon the assumption that it would do so. The state is not to be looked upon in the light of a barrator, and the court will not impute to it, or to its officers acting for and in its name, a litigious or vindictive spirit, or a purpose needlessly to vex and harrass the citizen with lawsuits. Whatever the rule may be in the case of natural persons, the court will presume that a state is incapable of such a vulgar passion, and, until the fact is shown to be otherwise, will act on the assumption that a state will not bring any more suits than are fairly necessary to establish and maintain its rights."

This case was affirmed in 142 U. S. 339, 35 L. ed. 1035.

The effect of the allegations in the bill is that complainant is afraid to trust the State Corporation Commission to

pass on the question of whether it is doing business in Virginia. It is alleged that the State Corporation Commission is threatening to take proceedings to compel it to comply with the law requiring foreign corporations doing business in Virginia to pay a privilege tax and to file its charter, etc. The bill assumes that when this question is decided by the Corporation Commission of Virginia, it will be decided adversely to the contention of the complainant. Therefore, the complainant says it is afraid that the Corporation Commission will make a mistake in its decision. It is well established that the fact that irregularities are feared is not ground for an injunction, and irregularities will not be presumed. 2nd Cooley on Taxation, 3rd ed. p. 1444, citing *Louisville &c. R. Co.* v. *Bate*, 22 Fed. 480; *Moore* v. *Albany*, 98 N. Y. 396.

Therefore, it seems clear that the allegations in the bill do not bring the case under any of the recognized heads of equity jurisdiction.

(c) Because the State Corporation Commission when acting under section 1105, Va. Code 1904, as amended, is a court and not subject to an injunction by the Federal courts.

Sec. 720, Revised Statutes (U. S. Comp. Stat. p. 581), provides as follows:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

As was pointed out by Mr. Justice Holmes in *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210, 53 L. ed. 150, the State Corporation Commission of Virginia exercises some functions which are legislative, some that are judicial and some that are executive (*Norfolk & Portsmouth R. Co.* v. *Commonwealth*, 103 Va. 289, 294); and the question as to whether the functions in the proceedings under section 1105, Va. Code, as amended, are judicial or not depends entirely upon the character of the

functions exercised and the powers of the commission in the proceedings, and not the character of the body. Says Mr. Justice Holmes in the above case, at p. 225:

> "We shall assume as we have said that *some of the powers of the commission are judicial*, and we shall assume, without deciding, *that if it was proceeding against the appellees to enforce this order and to punish them for a breach, it then would be sitting as a court and would be protected from interference on the part of courts of the United States.*" (Italics ours.)

That the functions exercised by the commission are in some cases judicial is made clear by the decision of the Supreme Court of Appeals of Virginia and the language of Keith, P., in *Winchester &c. R. R. Co.* v. *Commonwealth*, 106 Va. 264, 281, referred to with approval by Mr. Justice Holmes. Says the learned president:—

> "When it (the State Corporation Commission) comes to enforce its rules and regulations, and to adjudge the penalties for their violation, a stage has been reached at which the Fourteenth Amendment throws its aegis over the litigant, who must be summoned to appear and permitted to defend in accordance with the law of the land, and this right to be summoned to answer is not satisfied by the antecedent summons and appearance before the commission at a time when the adoption of the rule or regulation was under consideration. The commission may exercise legislative and judicial functions, but cannot fix and blend them in one procedure, but when *considering the adoption of a regulation is in the exercise of one department or head of its authority, and when passing upon the violation of such regulation is exercising a wholly separate function* and is to be controlled by wholly different considerations in order to meet the requirements of due process of law and to adjudicate rights in accordance with the law of the land." (Italics ours.)

It was held in the *Prentis Case* that the State Corporation Commission in fixing railway passenger rates was not sitting as a court, but that it was exercising a legislative function.

In distinguishing judicial functions from legislative functions, Mr. Justice Holmes on page 226 used the following language:

> "A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end."

Therefore, when we look at the proceedings under section 1105 and under the general powers of the State Corporation Commission, we note, first, that "the moment for legislation is past" and the time for litigation has come; that the law has been laid down by the legislature and the question to be determined under the proceedings is whether the corporation is transacting business in this state within the meaning of section 1105, as amended. In determining this question, the Corporation Commission first investigates, and then declares and enforces liabilities as they stand on present or past facts and under laws that already exist; and, under the rule laid down by Mr. Justice Holmes, is exercising a judicial function, and, therefore, is not subject to injunction by the Federal courts.

(d) Because the suit is in effect a suit against the State within the meaning of the Eleventh Amendment of the Federal Constitution.

While the prayer of the bill is that the State Corporation Commission may be perpetually enjoined from imposing or attempting to impose the fines or penalties provided in the statute, and from directly or indirectly interfering with the business of the complainant, the effect of an injunction issued thereunder would be to prevent that branch of the state government which is charged with the duty of supervising corporations, and causing them to comply with the statutes of Virginia and through which all licenses to do business in this state are granted to foreign corporations, from inquiring into the question and accumulating evidence to determine whether this foreign corporation is doing business in Virginia or not.

On this point we will content ourselves with quoting from the brief of former Attorney General Sam'l W. Williams and his assistant, Richd. B. Davis, filed in this case in the District Court of the United States for the Eastern District of Virginia.

"From the provisions of the Constitution and statutes, it is apparent that in the institution of any suit or the commencing of any proceedings by the commission, with respect to the matters referred to in the bill, it is the government itself proceeding in an orderly and ascertained way to enforce its criminal laws against the violators of its statutes.

"By the express terms of the statute 'all complaints, proceedings, contests, or controversies by or before the commission, whether instituted by the commonwealth or by the commission of its own motion, the commonwealth shall be complainant, and the party against whom the complaint is preferred, or proceeding instituted, shall be defendant.'

" 'That all writs, processes, and orders of the commission shall run in the name of the commonwealth', that 'All judgments of the commission for fines or penalties for contempt, or for the violation of any provision of the Constitution, or the laws of this state, or for the failure or refusal of any corporation to obey and observe the lawful rules, regulations, or orders of the commission, shall be entered up in favor of the commonwealth, and when collected shall be paid by the clerk of the commission into the treasury.'

"It is perfectly apparent and manifest that in all join it is the commonwealth that is proceeding, and that such suits or proceedings as the plaintiff now seeks to enthe commonwealth in he *real*, as well as the technical, party in whose favor, and for whose benefit, the proceedings are had.

"A suit to enjoin such proceedings is in reality and in fact a suit against the commonwealth under the repeated decisions of the Supreme Court of the United States; and is not within the jurisdiction of this court.

"In *Ex parte Ayers*, 123 U. S. 443, 31 L. ed. 216, the court considered fully the question when a suit was to be held a suit against a state, of which the United States

courts had no jurisdiction; and after a copious review of the authorities states its conclusion as follows:

" 'The inference is, that where it is manifest, upon the face of the record, that the defendants have no individual interest in the controversy, and that the relief sought against them is only in their official capacity as representatives of the state which alone is to be affected by the judgment or decree, the question then arising, whether the suit is not substantially a suit against the state, is one of jurisdiction.'

" 'The very question was presented in the case of *New Hampshire* v. *Louisiana* and *New York* v. *Louisiana*, 108 U. S. 76, 27 L. ed. 656. In each of those cases there was upon the face of the record nominally a controversy between two states, which, according to the terms of the Constitution, was subject to the judicial power of the United States. So far as could be determined by reference to the parties named in the record, the suits were within the jurisdiction of this court; but, on examination of the cases as stated in the pleadings, it appeared that the state, which was plaintiff, was suing, not for its own use and interest, but for the use and on behalf of certain individual citizens thereof who had transferred their claims to the state for the purposes of suit. It was accordingly unanimously held by this court, that it would look behind and through the nominal parties on the record, to ascertain who were the real parties to the suit. The chief justice, speaking for the court in that case, made a review of the circumstances which led to the adoption of the 11th Amendment, and, in concluding his opinion, said: "The evident purpose of the amendment, so promptly proposed and finally adopted, was to prohibit all suits against a state by or for citizens of other states, or aliens, without the consent of the state to be sued; and, in our opinion, one state cannot create a controversy with another State, within the meaning of that term as used in the judicial clauses of the Constitution, by assuming the prosecution of debts owning by the other state to its citizens. Such being the case, we are satisfied that we are prohibited, both by the letter and the spirit of the Constitution, from entertaining these suits, and the bill in each case is dismissed.' "

"The converse of that case is to be found in *Hagood*

v. *Southern*, 117 U. S. 52. 29 L. ed. 805. There, the State of South Carolina, which was the party in interest, was not nominally a defendant. The nominal defendants were the treasurer of the State of South Carolina, its comptroller general, and the treasurers of its various counties and their successors in office. The object of the bills was to obtain on behalf of the complainants, by judicial process, the redemption by the state of certain scrip of which they were holders, according to the terms of a statute in pursuance of which it was issued, by the levy, collection, and appropriation of a special tax pledged to that purpose, as they claimed by an irrepealable law constituting a contract, protected from violation by the Constitution of the United States. The decrees of the circuit court granting the relief were reversed, and the cause remanded with instructions to dismiss the bills, on the ground that the suits, though nominally against the officers of the state, were really against the state itself. In its opinion, this court said page 67. 'These suits are accurately described as bills for the specific performance of a contract between the complainants and the State of South Carolina, who are the only parties to it. But to these bills the state is not in name made a party defendant, though leave is given to it to become such, if it chooses; and, except with that consent, it could not be brought before the court and be made to appear and defend. And yet it is the actual party to the alleged contract, the performance of which is decreed, the one required to perform the decree, and the only party by whom it can be performed. Though not nominally a party to the record, it is the real and only party in interest, the nominal defendants being the officers and agents of the state, having no personal interest in the subject matter of the suit, and defending only as representing the state. And the things required by the decrees to be done and performed by them are the very things which, when done and performed, constitute a performance of the alleged contract by the state. The state is not only the real party to the controversy, but the real party against which relief is sought by the suit, and the suit is, therefore, substantially within the prohibition of the eleventh amendment to the Constitution of the United States.

"In *ex parte Ayers*, 123 U. S. 516, 31 L. ed. 216, the court says:

" 'The relief sought is against the defendants, not in their individual, but in their representative capacity as officers of the State of Virginia. The acts sought to be restrained are the bringing of suits by the State of Virginia in its own name and for its own use. If the State had been made a defendant to this bill by name, charged according to the allegations it now contains—supposing that such a suit could be maintained—it would have been subjected to the jurisdiction of the court by process served upon its governor and attorney general, according to the precedents in such cases. *New Jersey* v. *New York*, 30 U. S., 5 Pet. 284, 288, 290 (8 L. ed. 127, 128, 129). * * * If a a decree could have been rendered enjoining the State from bringing suits against its taxpayers, it would have operated upon the State only through the officers who by law were required to represent it in bringing such suits, viz: the present defendants, its attorney general, and the Commonwealth's attorney for the several counties. For a breach of such an injunction, these officers would be amenable to the court as proceeding in contempt of its authority, and would be liable to punishment therefor by attachment and imprisonment.'

"In *Pennoyer* v. *McConnaughy*, 140 U. S. 19, 35 L. ed. 363, the court defines the several classes of cases in which the State is held to be a party so as to defeat the jurisdiction of the United States courts, and those in which the State is held not to be a party.

"It is well settled that no action can be maintained in any Federal court by the citizens of one of the states against a state, without its consent, even though the whole object of such suit be to bring the state within the operation of the constitutional provision which provides that 'no state shall pass any law impairing the obligation of contracts. This immunity of a state from suit is absolute and unqualified, and the constitutional provision securing it is not to be so construed as to place the state within the reach of the process of the court. Accordingly, it is equally well settled that a suit against the officers of a state, to compel them to do the acts which constitute a performance by it of its contracts, is, in effect, a suit against the State itself.

"In the application of this latter principle, two

classes of cases have appeared in the decisions of this court, and it is in determining to which class a particular case belongs that differing views have been presented.

"The first class is where the suit is brought against the officers of the state, as representing the state's action and liability, thus making it, though not a party to the record, the real party against which the judgment will so operate as to compel it to specifically perform its contracts. (Cases cited).

"The other class is where a suit is brought against defendants who, claiming to act as officers of the state, and under the color of an unconstitutional statute, commit acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the state. Such suit, whether brought to recover money or property in the hands of such defendants, unlawfully taken by them in behalf of the state, or for compensation in damages, or, in a proper case where the remedy at law is inadequate, for an injuncton to prevent such wrong and injury, or for a mandamus, in a like case, to enforce upon the defendant the performance of a plain legal duty, purely ministerial, is not within the meaning of the Eleventh Amendment an action against the State."

"In *Hopkins* v. *Clemson College*, 221 U. S. 636, 642, 55 L. ed. 890, the court uses this language:

"'With the exception named in the Constitution, every State has absolute immunity from suit. Without its consent it cannot be sued in any court, by any person, for any cause of action whatever. And, looking through form to substance, the Eleventh Amendment has been held to apply, not only where the State is actually named as a party defendant on the record, but where the proceeding, though nominally, against an officer, is really against the State, or is one to which it is an indispensible party.'

"In the case of *Davis & Farnum Mfg. Co.* v. *Los Angeles*, 189 U. S. 207, 217, 47 L. ed. 778, suit was brought by citizens of Massachusetts in the Circuit Court of the Southern District of California to restrain the City of Los Angeles and its officers from enforcing certain municipal ordinances prohibiting the erection of gas tanks in certain portions of the city.

"There was a demurrer to the bill that was sustained by the court, on the ground, apparently, that the court has no jurisdiction to enjoin criminal proceedings, unless they are instituted by a party to a suit already pending and this was affirmed by the Supreme Court, and in the course of his opinion delivered by Justice Brown, says:

" '2. The court below did not pass upon the validity of these ordinances, but came to the conclusion that a bill in equity would not lie to restrain their enforcement, and in this aspect we shall discuss the case. As the only method employed for the enforcement of these ordinances was by criminal proceedings, it follows that the prayer of the bill to enjoin the city from enforcing these ordinances, or prevent plaintiff from carrying out its work, must be construed as demanding the discontinuance of such criminal proceedings as were already pending and inhibiting the institution of others of a similar character.

" 'That a court of equity has no general power to enjoin or stay criminal proceedings unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there, or to prohibit the invasion of the rights of property by the enforcement of an unconstitutional law, was so fully considered and settled in an elaborate opinion by Mr. Justice Gray, in *Re Sawyer*, 124 U. S. 200, 31 L. ed. 402, 8 Sup. Ct. Rep. 482, that no further reference to prior authorities is deemed necessary, and we have little more to do than to consider whether there is anything exceptional in the case under consideration to take it out of the general rule. The plaintiff in the case of Sawyer sought to restrain the mayor and committee of a city in Nebraska from removing a city officer under charges filed against him for malfeasance in office. This was held to fall within the general rule, and not within the exception.

" 'The general rule that a circuit court of the United States, sitting as a court of equity, cannot stay by injunction proceedings pending in a State court to enforce criminal laws of such State was applied in *Harkrader* v. *Wadley*, 172 U. S. 148; 43 L. ed. 399, 19 Sup. Ct. Rep. 119, to a case where the plaintiff sought to enjoin proceedings against him for the embezzlement of the assets of a bank; and in *Fitts* v. *McGhee*, 172 U. S. 516, 43 L. ed. 529, 19 Sup. Ct. Rep. 269, to a suit brought by the receiver of a

railroad against the attorney general of the State to restrain him from instituting or prosecuting criminal proceedings to enforce against the plaintiff the provisions of a state law reducing the tolls which had been exacted of the public by the railroad, of which the plaintiff was receiver. This was held to be in reality a suit against the state to enjoin the institution of criminal proceedings, and hence within the general rule. See also *Prout* v. *Starr*, 188 U. S. 537, *ante*, 584, 23 Sup. Ct. Rep. 398.' 47 L. ed. p. 7, 780.

"See also *Fitts* v. *McGhee*, 172 U. S. 516; 43 L. ed. 535;

Hagood v. *Southern R.*, 177 U. S. 52, 29 L. ed. 805;

Harkrader v. *Wadley*, 172 U. S. 148; 43 L. ed. 399;

Ex Parte Young, 209 U. S. 123; 52 L. ed. 714;

Murray v. *Wilson Distillery Co.*, 213 U. S. 150, 53 L. ed. 742;

Union Tr. Co. v. *Stearns*, 119 Fed. 790;

Morenci Copper Co. v. *Freer*, 127 Fed. 199;

Western Union Tel. Co. v. *Andrews*, 154 Fed. 95.

"Upon these authorities it is submitted that this suit is against the Commonwealth of Virginia and cannot be sustained in this court."

III. UNDER THE ADMISSIONS BY THE COMPLAINANT IN THE RECORD, IT IS APPARENT THAT COMPLAINANT CORPORATION IS DOING AN INTRASTATE BUSINESS IN VIRGINIA.

The company's method of doing business, as admitted in the record, is as follows: It employs one H. C. Grubbs, who is designated by his own cards as "Sales Manager of the Dalton Adding Machine Company", and who maintains in the City of Richmond an office, bearing the sign "Dalton Adding, Listing and Calculating Machines" (Record, p. 53). This Sales Manager contracts with the telephone company in the name of "Dalton Adding Machine Co., H. C. Grubbs, Va. Sales Mgr." (Record, p. 55.)

Taxes have been assessed by the City of Richmond and paid in the name of the Dalton Adding Machine Co. (Record, p. 57.)

In disposing of its machines, the Company uses three forms: one where the party buys the machine and pays for the same outright; one where the party buys the machine and pays for the same in partial payments; and one where the party rents the machine for six months at ten dollars a month, with the option to the renter to purchase within the rental period, in which case the amount paid as rental is applied to the purchase price. The first two forms contain at the top thereof the following: "This order subject to approval of the Company". The third, or rental form, contains the following: "Not effective unless approved by the Company." (Record, pp. 47.)

The Company's method of doing business involves or may involve:

(a) Exhibiting the machines to the public and to prospective purchasers.

(b) Leaving the machines with a prospective purchaser for trial, thereby establishing the relation of bailor and bailee.

(c) Sale by an order, the machine subsequently to be shipped from the factory.

(d) Sale of the machine which had been left on trial at the prospective purchaser's place of business. (About thirty per cent. of the sales are effected in this manner, Record, p. 9.)

In addition to the business of selling machines, the company sells at its office in Richmond "ribbons, paper and miscellaneous supplies necessary and convenient to operate the Dalton Adding Machines" (Record, pp. 54, 70). It is not contended that, in order for title to these supplies to pass, the sale had to be ratified in Missouri at the home office, but it is claimed that these sales are merely incidental to the main business, which is interstate in its nature.

We freely concede that if the company were to confine itself to that method of business which consists in procuring orders from prospective purchasers to be filled by the subsequent shipment of machines from Missouri to Virginia, it would be engaged in interstate commerce only and would be free from state taxation, either in the shape of a license fee to be required from its agent or in the shape of a license to be collected from it as a foreign corporation doing business in Virginia. *Holder* v. *Aultman,* 169 U. S. 81, 42 L. ed. 669; *Caldwell* v. *North Carolina,* 187 U. S. 622, 47 L. ed. 336; *Stockard* v. *Morgan,* 185 U. S. 27, 46 L. ed. 785; *N. & W. R. Co.* v. *Simms,* 191 U. S. 441, 48 L. ed. 254; *Rearick* v. *Pennsylvania,* 203 U. S. 507, 51 L. ed. 295; *Emert* v. *Missouri,* 156 U. S. 296, 39 L. Ed. 430.

But this case is clearly distinguishable from those cases establishing the above rule. In the first place, the company has established a trade domicile, or sales agency, in the City of Richmond, where it exhibits for sale, and actually sells, goods which have already been transported into the state for that purpose. In the second place, when it brings into this state, without a previous order, a machine and after its arrival enters into an agreement by which it leaves the same in the place of business of a prospective purchaser, it establishes a business relationship with the prospective purchaser which is independent of any interstate contract, and the fact that the bailment is without pecuniary consideration at the time does not deprive the transaction of its business character, nor make it less a contract than if there was a pecuniary consideration passing to the bailor. In the third place, when it sells outright the machines which had been previously left with a prospective purchaser, such a sale is not followed by any movement of a commodity in interstate traffic. The movement of the commodity has preceded the sale; the goods have already been brought into Virginia, have come to rest in this state and are commingled with the mass of property in this state, and their sale is not the result of any interstate bargain. In the fourth place, the sale at its office in Richmond of ribbons, pa-

per and miscellaneous supplies, necessary and convenient to operate the machine, is clearly no part of an interstate contract or bargain. Such goods have been commingled with the mass of property in the state and the business connected with their sale is not similar to those cases where the chief character of the corporation is interstate, like the great railroad corporations or telephone and telegraph corporations. The fact that the company's business in supplying paper, ribbons and machines is small in no way affects the fact that the business is purely intrastate. It is to be presumed that, although the company now does only a small amount of business in these supplies, it is willing, ready and able to do a large business therein.

It is perfectly clear that where a company is doing both an interstate and an intrastate commerce business, a license tax may be levied upon the latter if it be separable from the former and if the company be left free, should it desire to do so, to give up its intrastate business and continue its interstate transactions. *Pullman Co.* v. *Adams,* 189 U. S. 420, 47 L. ed. 877; *Osborne* v. *Florida,* 164 U. S. 650, 41 L. ed. 586; *Pullman Co.* v. *Kansas,* 216 U. S. 56, 54 L. ed. 378.

In so far as this company receives orders by exhibiting samples, and goods are shipped to meet said orders, it is doing an interstate business, and, if this were all, it would not be subject to taxation in Virginia; but it does not confine itself to this character of business. As shown above, after its machines have been shipped into this state, it undertakes to sell, and does sell, these identical machines to parties in whose places of business they have been left for trial, the entire contract of sale being made and completed after the machines have been brought into this state, and have come to rest in the state and have been commingled with the mass of property in this state. It seems perfectly clear that these transactions are intrastate in their nature and not interstate.

Armour Packing Co. v. *Lacey,* 200 U. S. 226, 50 L. ed. 451;
Kehrer v. *Stewart,* 197 U. S. 60, 49 L. ed. 663;
Hopkins v. *United States,* 171 U. S. 578, 43 L. ed. 290;

American Steel & Wire Co. v. *Speed,* 192 U. S. 500, 48 L. ed. 538;

Ware v. *Mobile,* 209 U. S. 405, 52 L. ed. 855.

Under the express terms of its contracts of sale, the company obligates itself to keep its machines in repair for two years. Certainly such repair work cannot be held to be interstate business. *Browning* v. *Waycross,* 233 U. S. 18, 58 L. ed. 828. In this last case, it was held that the business of erecting lightning rods within the corporate limits, as the agent of a non-resident manufacturer on whose behalf such agent had solicited orders for the sale of such rods, and from whom he had received the rods, when shipped into the state on such orders, might be subjected to a municipal license tax without violating the commerce clause of the Federal Constitution, although the contracts under which the rods were shipped bound the seller at its own expense to attach to them the houses of the persons who ordered them. It was held that affixing the lightning rods to houses was carrying on a business strictly local in its character and peculiarly within the exclusive control of the state authority, and that said business was wholly separate from interstate commerce, involving no question of delivery of property shipped in interstate commerce or the right to complete an interstate commerce transaction. It seems just as clear here that the business of repairing machines which have been already sold is the carrying on of a business of a strictly local character, peculiarly within the control of the state authorities and wholly separate from interstate commerce.

For these and other manifest reasons, it seems clear that the order of the District Court of the United States for the Eastern District of Virginia denying an interlocutory injunction should be affirmed.

Respectfully submitted,

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January 13, 1915.

APPENDIX.

Powers and Duties of the State Corporation Commission—Chapter 56a, Virginia Code, 1904, Section 1313a.

(16.) *Powers of the Commission.*

The commission shall have power and authority to require, by its rules, regulations, and requirements, all corporations chartered under the laws of this state, and all foreign corporations, doing business in this state, to perform and discharge any public duty or requirement imposed upon such corporations by the Constitution, or by law, and may require all such corporations to furnish such reports to the commission as may be provided by the Constitution, or by law, and the commission may enforce against any such corporation, by its judgments and processes, any fine or other penalty imposed by law for the failure of any such corporation to perform any public duty required of it, or to comply with any requirement of law, or any lawful regulation of the commission in reference to the same. * * *

(22.) *Commonwealth to be Complainant, &c.*

That in all complaints, proceedings, contests, or controversies by or before the commission, whether instituted by the Commonwealth or be the commission of its own motion, the Commonwealth shall be complainant, and the party against whom the complaint is preferred, or the proceeding instituted, shall be the defendant. Any party complainant or defendant in any complaint, proceeding, contest or controversy shall be entitled to process, to convene parties, compel the attendance of witnesses, or the production of books and papers, in any proceeding or hearing before the commission.

(23.) *Proceedings to be as in Courts of Record.*

That the commission, on hearing of all complaints, proceedings, contests, or controversies, in which it shall be called upon to decide or render judgment in its capacity as a court

of record, shall observe and administer the common and statute law rules of evidence as observed and administered by the courts of this Commonwealth, in like manner as complainants and defendants in the courts of this Commonwealth.

(26 *The Commission to Summon Party Before it, Before Imposing Fine or Penalty; Contempts; Notice to be Given as to Rules or Orders Directed Against One or More Companies; General Order, Rule, &c., to be Published; Suspension of Order During Appeal; Penalties.*

That the commission, before entering any judgment for any fine or penalty imposed by law shall summon or rule the party upon whom such fine or penalty is sought to be imposed to appear before the commission at some public session to be designated in the process, to show cause against such fine or penalty, and why the same should not be imposed and judgment rendered therefor. * * *

(27.) *Powers of the Commission with Respect to Rendering and Enforcing Judgments, Penalties, &c., Collection and Payment of Same into the Treasury.*

The commission shall have power and authority in all matters of which it has jurisdiction under the Constitution, or the laws of this Commonwealth, to render and enter up judgment for fines and penalties, or for the recovery of money, in any complaint, proceeding, contest, or controversy, whether instituted of its own motion or otherwise, and to issue process of execution thereon, which may be levied and executed in like manner as executions awarded and issued upon the judgments or decrees of the courts of law or equity of this Commonwealth. All judgments of the commission for fines or penalties, for contempt, or for the violation of any provision of the Constitution, or the laws of this state, or for the failure or refusal of any corporation to obey and observe the lawful rules, regulations, or orders of the commission, shall be entered up in favor of the Commonwealth, and when

collected shall be paid by the clerk of the commission into the treasury, as hereinbefore provided.

(29.) *The Commission May Award and Issue, Serve, Execute, and Return Process, &c., and Compel Attendance of Witnesses, &c., As Courts.*

That the commission shall, in all matters within its jurisdiction have the power and authority to award and issue, have served, executed, and returned, any writ, notice, process, order, or order of publication which may by law be awarded, issued, served, executed, or returned by or to any court of law or equity in this Commonwealth, for the purpose of compelling the attendance of witnesses, the production of books and papers, the convening of parties, or the enforcement and execution of its findings, orders, or judgments.

(31.) *The Commission to Tax and Collect Like Fees and Costs as Courts; Fees and Mileage of Witnesses.*

That the commission shall cause to be taxed and collected in all complaints, proceedings, contests, or controversies instituted or pending before it, like fees and costs taxed and collected for like services by the officers of the courts of this Commonwealth; also, the fees and mileage of witnesses attending upon its public sessions, and may enter judgment for the same and issue execution thereon, which execution may be levied and executed in like manner as execution issued upon the judgments or decrees of the courts of law or equity of this Commonwealth; provided, that no costs shall be taxed or collected against the Commonwealth except on appeals of corporations under the provisions of section one hundred and eighty of the Constitution, which have been aggrieved by the assessments and ascertainments made by the commission under sections one hundred and seventy-six and one hundred and seventy-eight of the Constitution.

(34.) *Appeal to Supreme Court; How Taken and Perfected; to be Heard Promptly, &c.; How Section Construed.*

That the Commonwealth or any party aggrieved by any

final finding, order, or judgment of the commission shall have, of right, regardless of the amount involved, an appeal to the Supreme Court of Appeals, same to be taken and perfected within six months from the date of such final finding, order, or judgment, and the Supreme Court of Appeals may, on petition of the attorney general, or any other party so aggrieved, if said petition be presented within six months from the date of the final finding, order, or judgment of the commission, award a writ of supersedeas to any such final finding, order, or judgment, and may review, affirm, reverse or modify the same, as justice may require, and enter therein such order as may be right and just. All such appeals shall be taken and perfected, heard and determined, and the mandate of the Supreme Court of Appeals certified down to the commission in the same manner as appeals in equity causes from the circuit or corporation courts of this Commonwealth to the Supreme Court; except, such appeals shall be heard and disposed of promptly by the Supreme Court, irrespective of its place of session, next after habeas corpus and Commonwealth's cases already on the docket; provided, however, this section shall not be construed to interfere in any way with the provisions of sub-section (d), (e), (f) and (g) of section one hundred and fifty-six of the Constitution, as to appeals from the action of the commission, prescribing rates, charges, or classification of traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences, or public service of any transportation or transmission company, or refusal to approve a suspending bond, or requiring additional security thereon, or an increase thereof; but shall be construed to provide only for appeals from the final findings, orders and judgments of the commission in cases not expressly provided for by the Constitution.

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DALTON ADDING MACHINE COMPANY *v.* THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH OF VIRGINIA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

No. 190. Submitted March 8, 1915.—Decided March 22, 1915.

The rule that courts should not stop state officers charged with enforcing laws from performing their statutory duty for fear they should perform it wrongly applies especially in cases of taxes and license fees.

One carrying on business which he claims is interstate, and on which the State imposes a license tax, has an adequate remedy at law by paying the tax under protest and raising the constitutional question in a suit to recover it; and where, as in this case, no special hardship is shown, the general rule that equity will not enjoin the collection of taxes where there is an adequate remedy at law applies.

213 Fed. Rep. 889, affirmed.

THE facts are stated in the opinion.

Mr. Thomas A. Banning and *Mr. Samuel Walker Banning* for appellant.

Mr. John Garland Pollard, Attorney General of the State of Virginia, and *Mr. Christopher B. Garnett* for appellees.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is an appeal from an order of three Judges denying a preliminary injunction as prayed in the appellant's bill. The bill alleges that the appellant is a Missouri corporation, having its factory in Missouri, that it obtains orders for its machines in Virginia through drummers, considers and accepts or rejects them in Missouri, and, if it accepts, forwards the machine from its factory. In some cases the possible customer is allowed to try a machine previously forwarded and in the hands of the Virginia agent, and if he is accepted as a purchaser and desires to keep it, is permitted to do so. The appellant contends that its business in Virginia is wholly interstate. A statute of Virginia requires foreign corporations doing business there to obtain a license from the State Corporation Commission, to pay a fee, &c., and it is alleged that the Commission threatens to take proceedings to enforce the statute and the penalties provided for disobeying it against the appellant, contrary to Article I, § 8, of the Constitution. The appellant further alleges that it has reason to fear and fears a multiplicity of proceedings and the imposition of many fines and that it will suffer irreparable loss from even a temporary interference with its affairs, through loss of sales and prestige, help to its competitors and encouragement of similar proceedings in other States. 213 Fed. Rep. 889.

The court below remarked that it was not contended that the statute was unconstitutional but was alleged only that it was feared that it might be enforced in such a way as to contravene the Commerce Clause and suggested that if proceedings should be instituted by the Commission there would be a hearing before it, with a right to appeal to the Supreme Court of Appeals, and, upon a proper showing, to take the case to this court, and that there was nothing to indicate that the Commis-

sion would not give the appellant a fair hearing or would attempt to enforce the law against it in an oppressive way. On this ground, without expressing an opinion as to the liability of the appellant under the statute, it held that no case for an injunction was made out.

We agree with the District Court in its conclusion and in its grounds. Like it we leave on one side the merits of the appellant's claim of immunity and confine ourselves to deciding that no reason is shown for anticipating the ordinary course of the law. We also leave aside the question whether the action of the Commission is or is not the action of a court protected from interference on the part of the courts of the United States. Rev. Stat., § 720. *Prentis* v. *Atlantic Coast Line*, 211 U. S. 210, 226, 230. The general principle is that it is not for the courts to stop officers of this kind from performing their statutory duty for fear that they should perform it wrongly. *First Nat. Bank of Albuquerque* v. *Albright*, 208 U. S. 548, 553. Especially is this true in the matter of collecting taxes and license fees. *Boise Artesian Hot & Cold Water Co.* v. *Boise City*, 213 U. S. 276. The appellant has an adequate remedy at law in its right to raise the constitutional question if proceedings are taken against it, or, it seems, to recover the money if it pays under protest. No special circumstances are shown, that we can notice, to take this case out of the ordinary rule. *Indiana Mfg. Co.* v. *Koehne*, 188 U. S. 681, 690.

Decree affirmed.